IMT Nuremberg Archives

H – 187

International Court of Justice

595

OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING ET AL, DEFENDANTS, SITTING AT NURNBERG, GERMANY, ON 24 JULY 1946, 1000-1700, LORD JUSTICE LAWRENCE PRESIDING.

THE MARSHAL: May it please the Tribunal, the defendants Hess and Raeder are absent.

THE PRESIDENT: The Tribunal will now hear the applications for witnesses on behalf of the various organizations, taking the SS first.

MR. EIRYN JONES: If Your Lordship pleases, with regard to the SS organization defending counsel has applied for seven witnesses. Five of these -- von Eberstein, Hinderfeld, Hausser, Riedel and Reinicke -- are among the 29 SS witnesses whose evidence has been heard on commission. The prosecution has no objection to the calling of these witnesses, although, as there is a certain amount of overlapping in the evidence of Eberstein and Hinderfeld, it is suggested with respect that this might be avoided when those two sitnesses are examined by Dr. Pelckmann.

As to the other witnesses applied for, with regard to Rode, the Tribunal will see from defending counsel's application that an affidavit from this witness was put in by the prosecution as Exhibit USA 562. Dr. Pelckmann has informed me that he does not propose or desire to call Rode to testify before the Tribunal itself, but will be quite content to cross-examine Rode on commission.

Therefore, if the Tribunal thinks that the interests of Justice demand the resumption in this particular case of the taking of evidence on commission the prosecution has no objection to Dr. Pelckmann's suggestion. Perhaps in fairness to Dr. Pelckmann, I ought to add that I understand that Rode only arrived in Nurnberg a few days ago.

The last witness applied for is Hermann Rauschnigg, the former Senate President of the former free city of Danzig, and the author of the book "The Vocie of Destruction", extracts from which the prosecution has submitted in document Exhibit No. USSR 378 as part of the prosecution case. No affidavit from Rauschnigg has ever been used by the prosecution.

H0187 - 0002

I understand that Mr. Rauschnigg himself is now in the United States.

With regard to him, the prosecution object to his being called as a witness upon the following grounds.

If the Tribunal will look at defending counsel's application, it will be seen that there are three matters which it is desired to elucidate from Rauschnigg.

In so far as some of these facts may be relevant or have evidential value, I submit that those facts can be extracted from Rauschnigg's book "The Voice of Destruction", and that in these circumstances it is quite unnecessary to have Rauschnigg here as a witness himself. The prosecution would, of course, have no objection to further extracts from that book being put in as part of the defense case of the SS organization.

THE PRESIDENT: Would the prosecution object to interrogatories being put to Rauschnigg ?

MR. ELWIN JONES: No, My Lord, we should have no obejction to that.

There are facts set out in the first two paragraphs of defending counsel's application with regard to Rauschnigg. I submit that with regard to the first a Cassandra-like statement by Rauschnigg that up to 1939 his warnings were not heeded, it has, I submit, no evidential value whatsoever. With regard to the second paragraph in which it is stated that Rauschnigg has knowledge of the fact that in 1936-1937 Hitler did not yet have the intention of exterminating the Jews, it is not in any way clear how Rauschnigg could, in fact, have had any knowledge of Hitler's intentions at all -- even the devil knoweth not the heart of man.

H0187-0003

I do not submit that testimony of that kind from Rauschning would be wholly irrelevant. Whatever I have said, theprosecution would have no objection to further extracts' being taken from Rauschning's book, or interrogatories being administered to him.

THE PRESIDENT: Dr. Pelckmann.

DR. PELCKMANN: May it please the High Tribunal, I am in complete agreement with the exposition of Mr. Elwyn Jones as far as it applies to the rest of the witnesses. Regarding the statements referring to the witness Rauschning, I should like to state the following: The decision of the 13th of March under Figure 6-A, under Paragraph 3, says that it is relevant to have the proof whether the possible criminal aims of the SS are quite obvious or might have been known to the mass of the membership.

I have tried before the commission to prove that the activities were not criminal, that they were only singular acts or the acts of certain groups, and that these acts were not know to the masses. To try to prove this, I have 29 witnesses, and I have thousands of affidavits, and all this material will be submitted to the High Tribunal in due course. But all of these matters concern the legal membership.

The prosecution, on the other hand, in its charges against the SS, as well as against the other organizations, has brought its charges before the High Tribunal directly in this court room through documents and through the hearing of witnesses, a procedure which took many weeks, with the further assertion, as it applies to Figure 3 under the 13th of March, dealing with the fact that the mass of the SS membership know of the possible criminal aims of theSS and of the criminal acts ofthe various members of various groups.

The prosecution did not prove the fact that these facts were known to the membership, but on the other hand asserted only that this could be seen clearly from the circumstances, and was not in evidence. I consider it only just, right and proper that in addition to those statements of the SS membership which in the large I have submitted in an indirect manner by affidavit, and whose probative value could be disputed by the prosecution, we are concerned with the people in question, the members of the SS. And as I have said, I consider it

H0187-0004

only right and proper that besides the witness Rauschnigg, who is theonly one of my witnesses who is not under automatic arrest, and who seems to be the only one who can directly testify before the Court, with respect to the testimony of these five witnesses of the SS who had relatively high rank in the SS, and therefore have a general knowledge, it could be put to them that their testimony was not quite credible. As far as the personal credibility of Rauschnigg is concerned, I should like to state the following.

As has already been stated, he was an SS Standardenfuehrer and president of the Danzig Senate. He had the complete confidence of Hitler up until 1938. Then there was a break with Hitler. Rauschnigg emigrated, and he was very, very active with respect to publishing matieral. He published many books, and constantly warned of Hitler and his plans. Even today he has the reputation in the world that he is not defending and never did defend Hitler and his regime.

In his many conferences with Hitler, he learned -- and I now am coming to the main point of my application -- and he knows that at that time, at least, in the years 1936 and 1937, Hitler did not intend to exterminate the Jewish population, and he gave his reasons for that statement. The objection by the prosecution that it was quite impossible to know the intentions of Hitler does not apply completely, for it is the task of the Tribunal to realize and appreciate the intentions of Hitler in the prosecution and in the indictment. If the intentions of Hitler are known and recognized, then perhaps we can judge as to the knowledge of the mass of the membership of the organization.

We can only present circumstantial evidence, and if it is possible, we should like to present direct evidence and evaluate this evidence for Hitler's intentions; and these intentions should be know to Rauschnigg because of his conversations with Hitler. I do not believe that we can find a better witness for this point than Rauschnigg himself.

I come now to the second point of my application. Secondly, Rauschnigg learned that --

THE PRESIDENT: What is it, Dr. Pelckmann, that makes you think that Rauschnigg would be able to give this evidence?

H0187-0005

DR. PELCKMANN: I know his books, My Lord.

THE PRESIDENT: Then if it is in his book,how will it help to have him say what is in his book again?

DR. PELCKMANN: Of course, his books represent but a very small extract of his entire knowledge, and he did not write his books with a view towards this trial and the chief points at issue in this trial as they are stressed the prosecution today. The witness can answer the questions relating to the trial now better than if you were to tear the pages out of his books.

THE PRESIDENT: I understand you to be saying that the only reason you got to thinking that he would be able to answer these questions is because of what you see in the books. Then you do not know that he can give any further evidence than is in the book.

DR. PELCKMANN: Mr. President, of course, I do not know that; but my assumption based on experience is that he probably would be able to do so. I do not believe that I am asking for anything out of the ordinary. A man who applied himself so intensively from the years 1933 to 1936 and dealt so extensively with Hitler and Nazism and contemplated these matters in later years and discussed this system with foreign people, I assume, knows a tremendous amount more than is set down in these books. And, on the other hand, I have teh following reason for my application:

In order to incriminate the defendant, the prosecution has used excerpts from the books of Rauschnigg. These quotations are practically identical wit affidavits. The prosecution would have been in a position just as well to obtain affidavits which would have given us a little more detail as to his assertions.

According to the order which we follow here, I am justified in asking to have these witnesses who gave affidavits here for cross examination. And I believe --

THE PRESIDENT: I am not aware that such a rule applied to witnesses in the United States. The rule, in so far as any rule at all was made, was that people who were in this country, if they had made affidavits, might be brought here for cross examination; that rule has never been applied to person

H0187 - 0006

who were in the United States or in any other country outside this country.

The case of Mr. Messersmith is an instance, and there has never been a case of anybody's being brought in, except, perhaps, the witness Dahlarus.

DR. FELCKMANN: Another point of significance is that, as against the prosecution, in view of the fact that in contrast to the individual nature of the defendants I can only deal with members of the organization -- and this only in a limited way -- I believe that I may ask the High Tribunal that this witness, the only one who knows these things and can tell the High Tribunal about conditions at the time and can give us his impression and opinion about these matters, be brought here; for technical difficulties should not play a tremendous part in a proceeding of this significance.

May I continue, My Lord?

THE PRESIDENT: Certainly.

H0187-0008

DR. PELCKMANN: The witness is to testify further that it was Hitler's deliberate policy to deceive the German people as well as foreign countries about his plans and intentions, as, for instance, his war intentions.

In a very intimate conversation between Hitler and Rauschning, Hitler mentioned the fact -- and almost ridiculed the fact -- of how he was succeeding in fooling his own people, not only the foreign countries and in leading them around by the nose.

These questions are relevant in the significance of the evidence.

With regard to the Jewish question, I should like to refer to the assertion on the part of the Prosecution that a consistent way led from the Party program to the destruction camps at Auschwitz. The Party program, according to the mass membership, foresaw only an ordering or a regulation of the Jewish question according to the minority problem, but intensified somewhat through the Nurnberg Laws of 1935. But -- and this we can still discuss -- would not be a crime against humanity. If it is proved that during this time Hitler actually did not have the intention to exceed this program and to go beyond it, then the assertion of the Prosecution could not be upheld any longer. If Hitler's intention and attitude at that time is proved, the SS at that time and the simple SS man who followed only this program could not have any other program either.

The second point is the deception of the people. Today we know just what did take place, and all of this matter may be seen from the various documents, such as the Reichstag speeches of Hitler with regard to the will to peace, but it would be quite striking if a witness asserted that Hitler had confided to him that it was his principle that the followers, the Germans, should be deceived about his intentions, and in this matter the Prosecution would have to prove that the SS was not deceived -- that the SS, together with Hitler, actually knew what Hitler wanted to do.

THE PRESIDENT: Dr. Pelckmann, the Tribunal did not desire to hear a general argument from you upon the whole case. They are simply dealing with the question of whether this man Rauschning should be brought from the United States.

H0187 - 0009

DR. PELCKMANN: If the relevance of the testimony is not disputed, Mr. President --

THE PRESIDENT: Dr. Pelckmann, we have your written application bef us, and you are dealing with a variety of matters which are not mentioned in that written application.

DR. PELCKMANN: Of course, Mr. President, I could not set down everything in my application which I wish to say now. Of course, this application contains my main points: first, the Jewish question and, second, the deception of the German people and of the SS membership.

THE PRESIDENT: We have indicated to you what the view of the Tribunal is -- that we think that you have dealt with the application, and we do not desire to hear a general argument.

DR. PELCKMANN: Mr. President, I tried only to show the relevance o my three points of evidence. If assume the relevance in this matter, the may I be permitted to say the following:

That a single witness who is outside the SS, who in former times -- and I must say --

THE PRESIDENT: You have already said that, Dr. Pelckmann, more tha once, and the Tribunal is quite aware of what you have said.

DR. PELCKMANN: Mr. President, do you care to hear argument on the question of what reasons I have for thinking that we should deviate from the general rule and bring this witness here from America?

THE PRESIDENT: You have already presented argument to that effec

Now we will deal with the SD.

MR. DODD: Mr. President, Counsel for the SD has asked for only two witnesses, and the Prosecution has no objection to these two witnesses bein heard by the Tribunal. It seems like a reasonable number.

While I am before the Tribunal, may I go on with the applications for the Reich Cabinet and High Command as well?

THE PRESIDENT: The Reich Cabinet, we understood, was not going to be dealt with today.

MR. DODD: We received the application for one witness this morning

THE PRESIDENT: Oh, yes. Certainly. Go on and deal with those

H0187 - 0010

MR. DODD: With respect to the High Command, Counsel for the defendant organization has asked for six witnesses, and our position is that it is at least twice as many as are necessary and that three -- something like three -- would be a much more reasonable number to present before the Tribunal. We have no particular preferences or no objections, no particular objections, to any of the three. I understand, however, that Counsel prefers von Rundstedt, von Brauchitsch and von Mannstein, and we have no objections if that is his choice of the six, but we do object to six on the ground that they are too numerous and all of them have been heard before the Commission.

With respect to the application of the Gestapo, only two witnesses are asked for -- the witness Best and the witness Hoffmann, and we have no objection to the appearances of these two witnesses.

THE PRESIDENT: The two names Karl, Hans are Christian names, I suppose?

MR. DODD: Yes, so I have understood, Mr. President.

I am not clear, Mr. President, whether or not you wish to have me deal with the Reich Cabinet. Shall I make known our attitude toward the one witness?

THE PRESIDENT: I think so. Certainly, you may deal with them now if they are ready. Dr. Kubuschok --

MR. DODD: In any event, he has only asked for one witness, Mr. President, and we have no objection. The witness Schlegelberger.

THE PRESIDENT: Very well, Mr. Dodd. Unless Counsel for the SD, Gestapo and the Reich Cabinet want to say anything, the Tribunal does not think it is necessary to hear them.

Then, they would hear Counsel for the High Command, Dr. Laternser.

Yes, Dr. Laternser.

DR. LATERNSER (Counsel for the High Command): Mr. President, in view of the accusations raised against the High Command, I am convinced that the application for six witnesses is quite justified. In order for the Tribunal to decide the question of whether the High Command in its policies was criminal, the Tribunal must in advance be able to get a personal picture and a personal impression of some of these military leaders so that a just sentence may be

H0187-0011

passed. Can we assume that if we hear but a few people out of this large circle, which comprises 129 people, the High Tribunal has gathered a true picture because of those few people out of the circle that have been heard? My answer would be in the negative.

THE PRESIDENT: Can you tell me how many of the 129 we have already heard before the Tribunal?

DR. LATERNSER: Before this Tribunal, Mr. President, in the commissions, seven members of the group were heard, and two --

THE PRESIDENT: I did not say before the commission; I said before the Tribunal.

DR. LATERNSER: On occasion some of the persons who belonged to this group were questioned, and I would assume that five or six people were involved.

THE PRESIDENT: Yes. Go on.

DR. LATERNSER: In order to evaluate the number of people that are to be heard here, I ask that the following be taken into consideration:

In the defense of the organization and the calling of witnesses who might be in a position to refute the statements made by witnesses produced by the Prosecution, according to the resolution of the High Tribunal, my possibilit along these lines are strongly limited, for these witnesses have to be heard before the commissions first, even though in every other penal procedure, many interrogations of the witnesses would take place in other proceedin s. In this way the scope of the witnesses is delineated and limited from the beginning and is dependent upon the activity of the commission.

Mr. President, in order that I may be in a position to present to the High Tribunal the personal picture that is required for my proper defense, I should like to make the following suggestion, which I believe is quite practical:

May I suggest that for the people represented by me -- and I am speaking only for myself and the organization I represent -- that a span of time be set down during which time I may carry through the examining of witnesses before the Tribunal, and that the distribution of the time allotted should be left to the Defense. Then I would have the possibility of questioning the six witnesses that I have asked for, and of the period of time

H0187 - 0012

set down by the Court, I would use only two thirds for my examination, and I would put one third of the time at the disposal of the Prosecution for cross examination. In this way, Mr. President, I should like to accomplish only one thing -- so that in my opinion the most important point be proved and that would be that a personal impression be gained of the people who are accused.

H0187 - 0013

I assume that the Court would have no misgivings in this connection. And a further suggestion that I should like to make for the procedure to be followed in the hearing of the organizations ---

THE PRESIDENT: Dr. Laternser, let me make certain that I understand the suggestion. You are suggesting that the Tribunal should allot a certain time for the witnesses for the High Command, and that you, as Counsel examining the witnesses, should take up two-thirds of the time, and that the Prosecution, in cross-examination, should take up one-third of the time. Is that correct?

DR. LATERNSER: Yes, Mr. President. I quite agree, Mr. President. In that period of time I may call asmany witnesses as I choose to do.

THE PRESIDENT: How much time are you contemplating?

DR. LATERNSER: It is very hard for me to answer that question, Mr. President. I would like --

THE PRESIDENT: It is your suggestion. The Tribunal would like to know how much time you are suggesting.

DR. LATERNSER: One and one-half to two days, Mr. President. That is, altogether. And, I should like to put two more applications before the Tribunal, or rather, make two more suggestions, which may have some significance in this connection. All the witnesses which are to appear here have already been heard by the Commission. The transcripts of the interrogations are in the hands of the Tribunal, and the putting of the same questions would, in this case, with certainty be cumulative. How is the examination to be carried through, Mr. President, in order to avoid repitition?

From this state of affairs I suggest that I just put things of importance and the difficulties which we have just raised will be avoided by my suggestion. In my opinion, I believe the Tribunal should be in a position to compl with my applic tion, and in conclusion, I should like to suggest that the High Tribunal voice an opinion as to the handling of these arguments on the part of the accused orgnizations as to just how they would be handled. That would be all, Mr. President.

THE PRESIDENT: The Tribunal would like to hear you with reference to Dr. Laternser's suggestions, Mr. Dodd.

H0187 - 0014

MR. DODD: Very well, Mr. President. We have, insofar as we recall, made a list of the names of the people who have appeared before the Commission as members of the organizations, or of the groups, and those who have appeared before the Tribunal. I stated a few minutes ago that all of those who have not appeared, such as Von Brauchitsch -- who was to appear and who may have appeared yesterday, I am not informed -- will appear in a day or so.

With reference to the suggestion of Dr. Laternser that he be allotted a specific time and may use as many witnesses in that time as he sees fit, we find two difficulties. First of all, we do not feel that he is being generous enough in allotting us one-third of the time. In any event, we do not want to have a restriction placed on us in the effect that we have only one-third of the time that he has. If we are to examine witnesses on the time standpoint, we feel that much of the time would be taken up before the Tribunal on matters that have already been thoroughly dealt with before the Commission. All the witnesses have been heard before the Commission, and Dr. Laternser has had a full opportunity to examine and cross-examine before the Commission, and it seems unnecessary to burden the Tribunal with a great number of witnesses here.

THE PRESIDENT: I wanted to speak to Mr. Dodd.

The Tribunal would like to know whether it would make any difference to the arguments just presented to us if the Prosecution were allotted the same amount of time as Dr. Laternser?

MR. DODD: Well, it would make a little difference. Frankly, I didn't consider that too important a point.

THE PRESIDENT: Perhaps there's one other thing which bears upon it. The Tribunal would like to know how you think the difficulty is to be met that it seems unnecessary for the witnesses who are called before us here to give the whole of the evidence given before the Commission, or even to enter upon the evidence which has been entered upon before the Commission, and the Tribunal would like to know how that difficulty is to be met.

MR. DODD: We have been thinking about this very problem and we had assumed that the witnesses who have appeared before the Commission and who hav been examined there would not go over the same grounds before the Tribunal,

otherwise the proceedings of the Commission would be rather senseless, and we might just as well get up and read the record of what was said before the Commission. We had understood that the witnesses would have something new to add to what they have already said before the Commission. That is our understanding.

THE PRESIDENT: Of course, I think Dr. Laternser has said on various occasions that he attached importance to the actual presence of the witnesses so that the Tribunal could see him and form their own opinion of the witness's credibility.

MR. DODD: Yes, that is what I understood to be one of the reasons, but three members ----

THE PRESIDENT: In addition to seeing the witnesses and forming an opinion of their credibility, he would be able to summarize the evidence given.

MR. DODD: Yes, I assume that would be so. Of course, four of these members of the groups we are in the dark about, and two of the members of the Naval Command, Von Brauchitsch and Milch -- and there are a number of others.

THE PRESIDENT: Thank you.

MR. DODD: With respect to the time suggestion which I made, I repeat I do not think that is too important. I know we can confine ourselves in cross examination to the important matters, but I think it is theexperience of the Commission that we seldom stayed within the limits which were established.

THE PRESIDENT: I don't think it is necessary to hear further argument. We will consider your suggestion and further arguments, Dr. Laternser, are unnecessary unless there is anything particularly new that you wish to say. The Tribunal will consider your suggestion. We will now deal with the politica leaders.

LT. COL. GRIFFITH JONES: The leadership gorup has asked for seven witnesses, two of them are Gauleiters, and are witnesses Kauffmann and Wahl; one Kreisleiter Mayon von der Borch; one Ortsgruppenleiter Wegscheider; Blockleiter Hauffe, andtwo experts on the staff of the Hoheitstraeger, namely a farming expert who was also a political leader, and Haupfbauer who was a political leader in the D.A.F. The Prosecution has no objection to any of these witnesses, but we feel that the grounds could be adequately and properly covered. And it may be of help to the Tribunal if I suggested the witnesses most important and those which might be dispensed with.

H0187-0015

THE PRESIDENT: Probably the defense counsel would wish to make their own selection.

LT. COL. GRIFFITH JONES: My Lord, I fully appreciate that. I was only trying to assist the Tribunal if I could.

THE PRESIDENT: Yes, in indicating which appeared to you to be the most important.

LT. COL. GRIFFITH JONES: Yes.

THE PRESIDENT: Yes, perhaps you could do that.

LT. COL. GRIFFITH JONES: The Blockleiter Hoett, I respectfully submit, ought to be called, as he is the only Blocklieter represented. The witness Haupfbauer ought to be called because he represents the experts on these staffs. There is a certain amount of dispute about them. And also, he represents a number of political Leiters who were in the DAF itself. Of the Gaulieters, Kauffmann and Wahl are experienced. Kauffmann comes from an industrial district and Wahl from an agricultural district, and I understand, if there were to to be any preference, that Dr. Servatius prefers Kauffmann.

There are also, representing the agricultural districts, in addition to the Gaulieter Wahl, the Ortsgruppenleiter Wegscheider and the farmer Mohr. My Lord, I would respectfully suggest that certainly three of those witnesses are unnecessary. They really cover very much the same grounds as each other and the Prosecution, quite frankly, would have preferred the witness Wahl. I simply put that forward to explain that they are all from agricultural areas and perhaps one, or certainly two would be sufficient. Mayor von der Borch is an experienced Kreisleiter from an industrial district, and does, to a great extent, cover the same ground as the Gaulieter Kauffmann, so that the Tribunal might consider having one or the other if they felt that the present number was excessive.

Now, I don't think I can assist the Tribunal further than that.

DR. SERVATIUS: Mr. President, I named two Gaulieters, one from the industrial region; that is the witness Kauffmann; and the witness Wahl from a rural area; he lives in the vicinity of Augsburg. I believe it would be important to gain an impression of these two different types of Gaulieters. One of these men was active in the Party for twenty years, and the other for seventeen years, and were political leaders. A judge-

H0187-0016

ment of their activities over a long period of time and over a wide scope of activities can be reached only if you hear two people on the various topics. Therefore, I should like to ask that, if possible, both witnesses be heard and be granted me.

THE PRESIDENT: Dr. Servatius, two things I should like to ask you about these Gauleiters. Didn't these two, Kauffmann and Wahl, deal with exactly the same topics before the Commission?

DR. SERVATIUS: They could both testify about the same thing, but I should like to divide the topics and ask Kauffmann about the connections with the Reich government and I should like to ask Wahl about the connection and relationship to the Kreis and Orts group. Of course, if I use just one, then the topic won't be expanded.

THE PRESIDENT: You mean you haven't asked them about it before the Commission?

DR. SERVATIUS: Yes, but I kept these topics separate that way, Mr. President.

THE PRESIDENT: There is one other thing: How many Gauleiters have we heard already before the Tribunal?

DR. SERVATIUS: I should assume three or four, but I can't give you the exact figure; but they were not questioned about this topic with special reference as it would have disturbed the presentation of evidence if we had asked such questions.

THE PRESIDENT: Go ahead and deal with the other matters.

DR. SERVATIUS: The next witnesses apply to Kreis-Ortsgruppen-Block, and I believe that on each level one witness has to be questioned who can testify as to the conditions that applied and obtained. Their testimonies, of course, may overlap, but they can be abbreviated so that the actual testimony will be rather short so that we won't run too far afield; but it seems important to me to have one witness from each level, each bracket.

THE PRESIDENT: Could you give the Tribunal any estimate of the time you think it would take to deal with these seven witnesses?

DR. SERVATIUS: I am sure that I can conclude this matter in one day, Mr. President. However, it depends on how the presentation of evidence is to be carried on. I assume that we will have a brief

H0187 - 0017

H0187 - 0018

summary, that we will have a principal clarification of but a few questions.

Then two witnesses, Haupfbauer and Mohr, are on our list. One comes from the DAF, the German Labor Front, from an industrial region; and the other comes from the Food Ministry, and he cal tell about rural conditions. In general, both of these witnesses can tell aout the positions taken by the expert offices that were not political leadership offices, and in this way I sould like to show the separation of the political and the non-political leaders.

These are the statements I wish to make, Mr. President.

THE PRESIDENT: The Tribunal will adjourn.

(A recess was taken).

H0187-0019

THE PRESIDENT: The Tribunal makes the following order:

With reference to the case of the SS, the eight witnesses Brill, von Eberstein, Hinderfeld, Reinicke and Hausser are allowed.

Rode may be called to be cross-examined before the Commissioners.

Interrogatories may be administered to Rauschnigg but they must be administered immediately and they will only be considered before the case is closed. Further extracts from Rauschnigg's book, which has been referred to, may be submitted to the Tribunal.

With reference to the case of the SD, the two witnesses applied for, Hoeppner and Roessner are allowed.

The two witnesses applied for by the Gestapo, Best and Hoffman are allowed.

With reference to the application on behalf of the Reich Cabinet, the witness named must be called before the Commission.

With reference to the General Staff and High Command, General von Rundstedt and two others will be allowed. If it is desired that General von Brauchitsch should be one of the two, he must be called before the Commission and it is necessary that these matters should be decided by counsel for the defendant organization at once.

With reference to the political leaders, the defendant's counsel must select five out of the wintesses applied for and these five will be allowed.

That is all.

I call on Dr. von Luedinghausen.

DR. VON LUEDINGHAUSEN: May it please the Tribunal:

Yesterday I attempted to show the forceful reasons on the strength of which the leaders of the German state decided upon the reinstatement of Germany's armed supremacy.

However, Germany had waited herewith, in view of the negotiations concerning a general agreement on disarmament, which had started again with the so-called London communique of February 3rd, 1935 of the British Government and in which the German foreign policy, faithful to its readiness for peace which it had constantly proven, had at once consented to participate, and it was ready to

H0187 - 0020

wait even longer, until one could see whether or not these new negotiations promised to succeed, when suddenly, before even the negotiations had actually begun, the French government submitted, on March 1st 1935, a new defense bill concerning prolongation of military service, and the British government published at about the same time its afore-mentioned White Book. In view of both these documents, the German government could not do otherwise but take the measures mentioned before, if it did not want to become a trait or to its own people.

The effect of these German measures on the Western powers was a different one. England and Italy, it is true, at once protested ag inst them as an alleged unilateral cancellation of internation treaties, but they did by no means cut the threads for further negotiations. The British protest note contained the explicite inquiry whether the German government was ready to carry on further negotiations of the kind and extent provided for in the London communique, an inquiry which the defendant von Neurath at once answered in the affirmative, by the German communique of March 18th 1935, Document Book III, No. 98. And the then British foreign Secretary Eden went to Berlin at the end of March 1935 in order to hold conversations about the possibility of an agreement on the naval question.

In this connection, I particularly want to refer to the deposition of the witness, Ambassador Dr. Dieckhoff, who has been examined here. France only consequently pursuing its attitude toward the League of Nations and the latter's exclusive legitimatio for collective solution of the problems of disarmament and, therefore, of peace took the initiative to submit to the League of Nations, on March 20th, 1935, the measures taken by Germany, and to induce the League to establish a violation of the duty incumbing to all nations of carrying out assumed obligations. It goes without saying that the German Government refused to accept, in a note of April 20th, 1935, the renewed discrimination contained in this resolution of the League of Nations. However, the German foreign policy did not let itself be kept back by this resolution to

H0187 - 0021

continue trying very actively to establish an agreement with the Western powers, nor did the signature, on May 2nd, 1935, of the aforementioned Franco-Russian Assistance Pact and of the Russian-Czechoslovak Assistance Pact, supplementing the former.

On May 21st 1935, Hitler proclaimed in the German Reichstag a new peace program, in which he declared once more, and to the largest possible extent, his readiness, most strongly stressing his and the German people's will for peace, to participate in any system of collective cooperation, to secure European peace, and to re-enter the League of Nations, as well as to comply with any of such restrictions of the German Wehrmacht's armaments, which other countries would also adopt, provided the equality of rights for Germany was recognized.

H0187 - 0022

This speech of Hitler and the diplomatic discussions with other powers initiated at the same timehad the promising result that between England and Germany the well-known naval convention of June 18th 1935 was agreed on, which established a fixed ratio of the respective naval forces.

This German-English agreement is of the greatest importance in a double sense. On the one hand, from a political point of view, it signifies no less and no more than the implicit acknowledgment of German military sovereignty by England, a negation of the League of Nation's resolution and, at the same time, the French point of view, and the acknowledgment and approval by England of the German act which had been stigmatized by the League of Nations as a violation of treaties. For the first time, therefore, the equality of rights for Germany had been recognized not only de jure, but also de facto by one of the Western powers, and by one of the most important, too. On the other hand, it proves, from the point of view of this trial, irrefutably that the prosecution's contention, that one had to see in Germany's rearmament an act of preparation of the future wars of aggression of Hitler, is erroneous. On the contrary, this naval agreement shows clearly and unambiguously that the German foreign policy at that time, when still under guidance of my client, did not have any warlike intentions, much less plans, that the reassumption of military sovereignty under no circumstances had any warlike purposes, but nothing but a decidedly defensive character. I may ask, which statesman who carries in his heart warlike intentions or plans would voluntarily consent to a restriction of his armament, and, therefore, of a successful execution of his designs and plans, and, moreover, to an extent as provided by the naval agreement? Even the most malevolent mind cannot earnestly contend that the naval power allowed to Germany by this agreement would have been in the least sufficient for a war of aggression; that has been unobjectionably established by the evidence of this trial. Hitler himself had by this agreement robbed himself of the possibility of creating a navy which would have been able to wage a war of aggression. It is clear that any transgression worth mentioning of the agreed ratio of the two navies, which, as things were, could under no circumstances and by no means have been kept secret, would beyond doubt either have induced England to increase her own navy accordingly, or would have caused her to obstruct this German intention, andthis could have been done a time. From whatever point of view one may look at this naval agreement, the fact that it was and is an irrefragable proof of the absolute honesty and sincerity

H0187 - 0023

of the repeated declarations of Germany's will for peace, an unreversible proof against the presence of any, even the most secret warlike designs or plans of German foreign policy and, therefore, of its leader, the defendant von Neurath, is not to be shaken.

In France this Naval Agreement met with general opposition. It was regarded as an arbitrary act of England, a departing from the common line that was still kept to in the resolution of the League of Nations, and that was boun to interfere with the French plans. So France was very reluctant and reserved with regard to the negotiations started by Britain for the conclusion of a general air-pact negotiations, which ran parallel with the negotiations about the Naval Agreement. Hitler's speech of 21st May 1935 had also been causative for these negotiations. Because in this speech, Hitler, referring to the Londo report, held out his hand for an agreement on limiting of air armaments. And the German government themselves, taking up the English suggestion, presented a project for such an air pact on 29th May 1935. Negotiations lasting for near 3 months between the English and French governments were necessary before Engla succeeded to induce France to agree to participate even in these negotiations. This consent, however, was in reality no consent at all because, among other things, it was tied to the condition that the realization of this air pact must keep pace with the negotiations about the East-pact. As this pact, however, had then to be rejected by Germany for reasons of own security, as already mentioned, it was clear that the French condition in reality blocked the way to successful negotiations from the start. When, at the beginning of the Soviet Union sponsored Komintern congress, on 25th July 1935 it became unequivocally clear that the Komintern's aim was the world-revolution, Germany's opposition -- as will be understood -- stiffened.

It could not surprise that the defendant von Neurath on the 16th September 1935 communicated to the English Ambassador, that the German foreign policy did not consider ppportune an answer to the memorandum of the British Government of 5th August 1935, which demanded answers to a number of questions of France, that were hardly connected with the air-pact. Besides the Italy-Abyssinia conflict had already thrown its shadow ahead, whereby alone the further negotiations about the air-pact were suspended. How could a political agreement between the five powers of the Pact of Locarno be possible, and Germa

H0187 - 0024

foreign policy very reasonably pointed to the fact, if the collaboration of these powers was in dissolution and individual powers of this pact were facing each other in military readiness. On 7 th September 1935, as it is known, the English home-fleet set out for the Mediterranean, and negotiations between England and France about the application of sanctions against Italy were in full swing. On 3rd October 1935 war broke out between Italy and Abyssinia.

The German foreign policy succeeded in keeping out of the now following events in Africa and the efforts of the powers to apply sanctions against Italy. But nevertheless the events that followed became important for the German foreign policy; because it was these events and specially the question of sanctions which prepared a new constellation of powers, which on one hand led to a closer union of England and France and the point of view taken up by her and which, on the other hand, brought Germany, who was again defamed by the resolution of the League of Nations of 17th April 1935, naturally closer together with Italy who was defamed by the sanctions being taken against her.

The consequence of these sanctions was at the same time logically the dissolution of the Pact of Locarno, because it was not possible to consider a pact, as being still legally in existence if its participants were opposed to one another in so hostile a way, that the danger of war-like actions was present at any moment.

The efforts of the French Government, already begun with its note of 10th September 1935, to draw also England into the net of its pacts and their obligations, clearly showed the tendency of French policy, and inevitably confirmed German statesmen in their conviction that France consistently followed only its policy of encirclement which was felt as a menace to Germany. However, Germany's leaders and the defendant von Neurath still hesitated to draw the last conclusions from this and from taking the absolutely necessary step for Germany's most primitive security. German foreign policy still kept hoping, in its unshakable desire for peace and readiness to negotiate, that an agreement could be reached, that France would abandon its course, and that a really honest and sincere understanding with France could be reached. This hope, however was soon found to be a delusion. On 16th January 1936, French Foreign Minister Laval announced that, after his return from Geneva in the beginning of February, he would present for ratification to the French parliament the pact of assistance concluded with Russia. And at about the same time the defendant von Neurath hear

H0187 - 0025

from reliable sources that the French General Staff had worked out military plans for an attack on Germany, providing for the advance of French troops from the Rhineland and following along the line of the river Main so as to join hands via Czechoslovakia with the Russian Armies. Hereby the offensive character of the Franco-Russian pact was proved even to the most naive. There was all the less ground for doubt, if one took into consideration the negotiations that took place inside and outside the French chamber before the pact's ratification. For even in France, resistance to this pact, specifically on account of its offensive character, was not small. The French veterans of the 1st world war headed the opposition: The Union Nationale des Combattants declared, in a resolution of 8th February 1936, that this pact contained more certain ties of war than possibilities of peace. And the speech of deputy Montigny, in the French chamber, on 13 February 1936, was a single flaming protest. It is contained in my document book IV No. 107. The pact opened even further, so Montigny, said the breach between France and Germany, and Germany must more than ever gain the impression of encirclement, if a party depending on Moscow like the communists party followed the policy of Delcasse, the policy of revenge and of the former Russo-French pact. The greatest danger of war would arise, if France were to convey the impression that she enjoyed the secret protection of Moscow. Even the German government made a last attempt to keep France from ratifying the pact. In the interview that Hitler gave to Bertrand de Jouvenel, the correspondent of the French Newspaper "Paris midi", on 21st February 1936 -- doc. Book IV No.108 -- Hitler once again held out his hand to the French people for an understanding, for a lasting peace and friendship: "I want to prove to my people", so Hitler literally declared, "That the idea of hereditary enmity between France and Germany is nonsense." And Hitler once and for all in that interview, finished off the reference to his book "My Struggle", that was brought up then as it has been continuously been repeated in this court, by stating: "When I wrote this book I was in prison. At that time French troops occupied the Ruhr. It was a moment of greatest tension. Yes, we were enemies, and I stuck to my country as it should be, just as I stood to my country against yours in the trenches when I was for 4½ years in the war. I would despise myself, if in case of a conflict I were not aGerman first of all. But today there is no reason anymore for any conflict. You would like me to

H0187 - 0026

correct my book like a writer. But I am no writer. I am a politician. I make my corrections through my foreign policy which is directed towards an understanding with France. If I achieve the German French understanding, it will be a dignified correction. At the same interview, however, Hitler drew attention most clearly to the inevitable consequences of the Franco-Russian pact: "My personal efforts to such an understanding will never cease. However, this more than regrettable pact would, in fact, create a new situation. Are you not conscious, in France, of what you are doing?

H0187-0027

They let themselves be drawn into a diplomatic game of a power which wants nothing but to bring the great European nations into a chaos from which this power alone derives advantage. One must not lose sight of the fact that Soviet Russia is a political factor which has at her disposal an explosive revolutionary conception and a gigantic armament industry."

He concluded this interview emphasizing again that France could end this alleged German danger for good if it so desired, because the German population had complete confidence in him, their leader, and he, this leader, desired friendship with France. The hearing of evidence has proven that Hitler meant these declarations to be honest and sincere."

But it was all in vain. The French Government could not be moved any more to relinquish its rigid attitude, and on 27 February 1936 the French Chamber voted to ratify the pact in spite of all warning.

The die was cast. On 7 March 1936 German troops marched again into their previous garrisons in the Rhineland Zone, which had been demilitarized until then; the German Reich had won again its full sovereignty over the entire Reich territory; the last of the restrictive barriers of the Versailles treaty had fallen.

This reinstatement of the full sovereignty of the Reich over the Rhineland, however, was of importance for one reason, which by far surpassed its political and prestige significance -- as seen from the standpoint of existence of the German State and nation -- and also was the sole and therefore the more pressing reason and cause for the important resolutions made by the German Government. This was the security of the Reich. As long as the Rhineland was demilitarized, not only one of the most valuable and most important provinces but the Reich itself, and especially its life source the Ruhr territory, was without protection against any military attack from the West. The only protection for Germany against the latent terrible danger lying in this fact existed in the Locarno pact, made in 1925, firmly guaranteed by Great Britain and Italy, in which France and Belgium, on the one hand, and Germany on the other hand, underwent the obligation not to wage war against each other.

H0187-0028

Therefore it was -- if the German Reich was to put up in future with the vulnerability of its Western frontier by having the Rhineland demilitarized -- a matter of life and death that the protection given by this treaty would not be falsified. Such falsification of its meaning and its essence, the protection of Germany, however, occurred at the moment when the political conditions and constellations, which existed at the time of the conclusion of the treaty, had changed fundamentally.

When the Locarno pact had been concluded the political conditions in Europe, and therefore also in Germany, were governed and determined solely by the four powers, England, France, Italy and Germany, acting in unison. And, therefore, the men who made the Locarno treaty for Germany could legitimately rely on the faithfulness of France and Belgium as sufficient protection. This supposition, however, ceased to exist and the meaning and essence of this treaty, and with it the protection for Germany, was bound to be changed, i.e. to be falsified, when France definitely changed the political conditions of Europe through concluding her pact of assistance with Russia and created a situation which frustrated the aim and purpose of the Locarno treaty, namely, to give Germany protection against the permanent danger caused by the demilitarization of the Rhineland.

The political constellation of Europe had been completely changed by this pact, by the fact that the world's greatest military power, which was openly revolutionary-minded at that time had entered the political arena. In the face of the not clarified situation in the East, amply laden with conflicting material, the pact could lead easily to the possibility that France, because of her duties toward Russia, became drawn in a war and would attack Germany, should the latter get entangled in a conflict in the East.

One has to admit that it was in no way sure, in any case highly problematical whether the guaranteeing powers, England and Italy, would consider the case for which the guarantee was given as arisen and would actively assist Germany against a French attack, or would rather prefer to stay neutral. That this possibility positively existed also from the legal point of view was

H0187 - 0029

shown already in the German note of 25 May 1935 about the French-Russian pact-- Document Book III No. 105 -- and was emphasized again in the German memorandum to the signatory powers of the Locarno pact of 7 March 1936 -- Document Book IV No. 109.

As I have already described to you, this possibility, this danger, became even greater and more imminent through the events up to the ratification of the French-Russian pact by the French Chamber and by the ratifiaction itself. Therefore, it was a command, a self-evident act of self-defence and self-preservation, when the German Government, realizing this threatening danger, took steps which were the minimum of what was necessary to meet this danger, namely, to establish the military sovereignty of the Reich in 1935 and to reoccupy, one year later, the demilitarized Zone of the French Armies, and thereby to move forward the defense line against any attack from the West to the border of the Reich.

With all due respect to the rights and rightful interests of other nations the highest of all overriding duty of every government, every responsible statesman, has been is now and always will be, to maintain and safeguard the existence and life of his own State and nation. A statesman who neglects this duty commits a sin against his nation. Re-establishment of military sovereignty, rearmament, and reoccupation of the Rhineland were the natural reactions, the answer of the German statesmen in duty bound, and therefore also that of the defendant von Neurath, to the policy of the French government, in which, after all that had ahppened before, they had to see and saw a threat to Germany.

Far be it from me -- and I wish to state this here emphatically -- to reproach the French government, morally or otherwise, for the policy followed by it as I have described it above. Moreover, I am of the conviction -- in agreement with the defendant von Neurath -- and recognize fully, that the French policy was dictated solely by France's interest, and the French statesmen surely have done only what they believed was just from the French point of view.

H0187 - 0030

And if they proceeded thereby from an incorrect premise according to German conviction, namely, the premise that a Germany which had regained its strength presented a danger and a threat to France, that from times of old the German people had faced in a blind rage of hatred and enmity the French people and were animated only by the furor to attack and the craving for revenge, then my client and I can only sincerely deplore this, but we cannot condemn it.

But, on the other hand, I too must claim the same right for the German statesmen, for the defendant von Neurath, that their deeds and actions be judged according to their motives, according to the then prevailing circumstances which of necessity, from the viewpoint of German interests, led to these motives, and that not an in itself mostimprobable interpretation, which was the farthest from them, be given to their motices.

Politics, diplomacy, are history which has come to life. Like the entire universe, like everything that lives and moves in it, so too is this living history subject to an unchangeable law, the law of causality.

And I believe Gentlemen of the Tribunal, in my deliberations, I have given irrebutable evidence to you, Your honours, of the following facts: that the two actions charged to the defendant by the prosecution, and which are said to incriminate him in particular because they represent breaches of contract in preparation of war, namely, the recovery of the military sogereignty of the Reich and the remilitarization of the Rhineland, were, according to the iron rules of logic and necessity, the outcome of the events and the political development during the years of my client's activity as Foreign Minister, due to the politics of the Western Powers, and that neither he nor Hitler have consciously, intentionally, and according to a preconceived plan, brought them about, but that they were the inevitable consequence of the French policy. They can therefore not only not, as is asserted by the prosecution in its retrospective consideration of things, have an aggressive or even war-preparing character or tendence, but to the contrary, by serving only the purpose of defense against and the warding off of a possible attack, they have an outspoken defensive and hence peaceful character. That alongside of this there is

H0187 - 0031

no room for their interpretation for a future war of aggression by Germany I guess I need not emphasize.

The assertion of the prosecution proves only the absolute unsuitablemess, the whole absurdity of a retrospective interpretation of and conclusions drawn from certain historical events torn out and abruptly lined up without any coherence. With the investigation of historical truths, which should be the first pre-supposition and duty of this high Tribunal, not only for the forming of its judgment but also for its duty to direct the ways of a new international law controlled by ethical principles, this manner of thinking has nothing whatsoever in common.

But a critical examination of the two steps charged against the defendants as breaches of international treaties does not prove sound upon closer scrutiny of the connections. For the Treaty of Versailles as well as the Treaty of Locarno had, in the course of time and events, not only lost their signification and therewith their inner justification, but both of them had long since been breached by exactly the French policy and thereby de jure annulled: the Treaty of Versailles by France's obstinate refusal of the disarmament obligations imposed upon her as well as upon the other contracting nations in return for Germany's disarmament; the Treaty of Locarno by the agreement with Russia which was incompatible with the Locarno pact. History, as often before, had passed over them too, and had thus shown the nonsense of applying rigidly the dogma of "Pacta servanda sunt", as France tried to maintain against Germany. This fact will not be altered, not even by the League of Nations resolution of 19 March 1936 which had been proposed by France and which is not astonishing in view of France's dominating position in the League of Nations, in which the latter declares that Germany, through re-militarizing the Rhineland, had violated article 45 of the Treaty of Versailles. History passed over these too.

I believe no further comments are needed upon this resolution and the explanations and parleys between the participating nations which preceded and followed it, for gradually, in the course of events, they petered out. Europe finally put up with the accomplished facts.

H0187-0032

And even on the supposition of the correctness of this resolution, according to the Charter of this high Tribunal the breach of an international contract is punishable only when it serves the purpose of preparation for a war of aggression. In the course of this trial one of the American gentlemen of the prosecution stated expressly that it was absolutely legal and justifiable by peaceable means to bring about a revision or the end of treaties. But the German policy has been nothing else. The military action of the re-occupation of the Rhineland was, in view of the small force of troops of only one division without participation of the air-force, in reality only a

H0187-0033

symbolic act for the restoration of the sovereignty of the Reich, and has been proved already by the fact, that as early as 12 March 1936 the German government through its ambassador in London in a statement contained in my document-book IV, No. 113, made the proposal, in the case of reciprocity to abondon the re-enforcement of troops and their closer approach to the borders. The proposal was rejected by France. The German policy has throughout and in every respect held to its line of peace- olicy for which it had stood consistently, for many years, and in reality it only wanted to serve and has served the purpose of peace and its maintenance in Europe. Both steps, the restoration of military sovereignty as well as the re-occupation of the Rhineland were, as I want to especially emphasize here, nothing else than the visible expression and effluence of the full and unlimited sovereignty of the Reich. This sovereignty in its part had already been recognized by the Western powers in the often mentioned Five-Power-Agreement of 11 December 193? by the recognition of Germany right of equality. More conclusive evidence of the love of peace and the absolute peace-policy of the defendant von Neura? could hardly be found than the fact that for years he waited with the realization of this recognition, in the interests of avoiding complications which due to the French policy by reasons of its former attitude might possibly arise up to the moment when, in consequence of the changed balance of power this realigation became an undeniable necessity for the security of the Reich, a necessity for self-defence. And the German foreign policy continued in practice to follow this tendency unchanged, even after and in spite of this resolution. In the German memorandum of 31 March 1936 -Doc. book IV No. 116- German foreign policy once more submitted to the powers, on behalf of the Reic Government, a new great peace-plan for a quarter of a century of peace in Europe, by which, as is stated in conclusion, it wanted to make a contribution to the building up of a new Europe on the basis of mutual respect. It thereby again gave clear and unmistakable evidence of its immutable will for peace. That this German peace plan, the absolute honesty and sincerity of wh? had been affirmed upon oath by the defendant, was also not successful, and if did not lead to the building up of a new pacified Europe, was not Germany's fault.

These same peaceful tendencies and intentions continued to dominate the defendant's policy during the years 1936-1937, in spite of all the disappointments he had experienced to date. This was expressed above all also by the treaty between the German Reich and Austria, which was concluded on the 11 July 1936 as the result of negotiations which had been carried on for some time by the defendant von Papen. Not only the defendant's own testimony but also the testimony of the witnesses Koepcke and Diekhoff prove beyond doubt that the standpoint on the Austrian question which the defendant consistently took up and supported from the very beginning was, that a closer co-operation between the two countries -both in the political and particularly in the economic field- had indeed to be striven for, but that Austria's inpedence had, under all circumstances to be respected and remain intact.

Therefore the defendant was an strict opponent of any attempts of interference by Germany with the internal politics of Austria and the attempt of the party to support the Austrian National Socialists in their fight against the Austrian Governments of Dollfuss and Schuschnigg and he had protested again and again against them with Hitler and not without success. That he, this Christian minded, honorable man, abhorred and condemned from the bottom of his hear the murder of Dollfuss need not be emphasized. And just from that viewpoint he welcomed the agreement of 11 July 1935 as it corresponded throughout to his own opinion. This alone contradicts the assertion of the prosecution that the agreement was concluded with intent to defraud, that is with the intention to lull the Austrian government into security and hereby to prepare and facilitate for the future the intent already existing at that time, of incorporating Austria by force into the German Reich.

The definite sincerity and honesty of the defendant at the conclusion of the agreement is confirmed by the sworn testimony of the then Austrian foreign minister Dr. Guido Schmidt. That the defendant von Neurath had no reason to doubt Hitler's honesty and sincerity is demonstrated unequivocally by Hitler's statements as deposed by the witness Koepcke to the British Foriegn Minister Simon on his visit in Berlin in March 1935 in connection with the fact that Hitler immediately after conclusion of the agreement urged on

H0187 – 0034

the leaders of the Austrian National Socialists Rainer and Globotschnik stric adherence to the agreement by the Austrian Nazis, as shown by the testimony of the defendant. And thus, from his view point, he considered this agreemen another step to the appeasement of Europe as the recognition of Austria's independence proclaimed in it, eliminated the European danger point comprise in the Austrian problem.

In the same way the defendant worked on an improvement of the relations between Germany and the Czechoslovakian Republic, since it was only with this aim in min that he mentioned so often to the Czechoslovak Ambassador Dr. Mastny that the Czechoslovak government must at last meet the demands, still very moderate at that time, of the Sudeten Germans, which were based on a promise in that matter given already in Versailles by the Czechoslovak goverr ment but not kept by her.

Nothing was further from the defendant's mind in both questions than the idea of their solution by force as later, after he had left his position as Foreign Minister, Hitler thought it the right thing to do.

And his efforts to improve the relations between the Reich and the European South Eastern nations and to make them closer, were served just as little aggressive intentions or even plans to partition Czechoslovakia with the help of these nations. If in Messersmith's affidavit it is alleged that Germany in order to secure this aim had promised to the South Eastern states, and even to Poland parts of Czechoslovakia and even of Austria, one can call this definite fantastic ideas which do not contain an iota of truth. What can be thought of these assertions is shown by the fact that the prosecution could not submit a single report from one of the diplomats of the Western Powers accredited States, which would confirm their accuracy or even only indicate it. Should only Mr. Messersmith have been so clever to have learned of such plans ? In reality the defendant's efforts and his trip to Budapest Belgrade and Sofia served exclusively peaceful purposes, namely the exchange and the strengthening of the economic relations of Germany with these states, an endeavour which, as shown by the testimony of the witness Koepcke, was clos to the defendant's heart and influenced his policies.

H0187 - 0035

H0187-0036

How far from him was any policy which even in the remotest sense seemed to him in accord with his policy of peace and international understanding, is proved best by the fact that he rejected the negotiations with Japan, entered into and carried on by the defendant von Ribbentrop in London without his assistance and completely independent of him, on direct instructions by Hitler and objected to the Anticomintern Pact finally concluded with her and expressed this clearly by refusing to sign this pact. It was, as is well known, and something quite extraordinary, signed by Herr von Ribbentrop as Ambassador. The objection of the defendant to this kind of policy could hardly be expressed more strongly.

The defendant von Neurath adhered faithfully and constantly to the last moment to this, his consistent peace policy in spite of the influences of other circles, especially from the Party, noticeable during his last years in office. He hoped until the last moment, to be able to check successfully these influences, to eliminate them and to further direct the policies of Germany along peaceful lines, faithful to his own convictions and to his promise to Hindenburg.

When on 5 November 1937, through Hitler's speech and his subsequent conversation with Hitler about it, in January 1938 he came to the conclusion that his influence on Hitler had disappeared, that Hitler would not shrink back from forceful, warlike measures, he drew immediately the consequences, and submitted his resignation, which was accepted. His task entrusted to him by Hindenburg, had become impossible to fulfill. He could not and could not have anything to do with a policy which did not shrink from warlike measures. It was completely out of the question to cover such a policy with his name, it would have been the negation of his entire life work. He would have betrayed hiemself and his people.

But this did not exclude that the defendant, who placed thw welfare of his people above everything, even above personal interests and desires, made himself available again when need be or when he believed to be able to spare Germany warlike complications, the danger which was brought about by Hitler's policy, made along different lines. And out of this, his attitude, it is only too understandable that when Hitler summoned him on 11 March 1938 to inform him of the march of the German troops into Austria and because of Reichsminist

von Ribbentrop's absence in London to ask for his advise and for the answer of the protest letter of the British Embassy, he declared himself willing to do it. But if the prosecution now accuses him that the content of this reply was actually incorrect the following must be said against it. The defendant had in this letter only stated what Hitler himself had told him about the events. The defendant himself knew just as little about the actual events as the rest of the world as, since his resignation as Foreign Minister, he no longer received any political information whatsoever. Hitler's announcement about the marching in of the German troops surprised him just as much as it did everybody else and as the order for it had surprised even the highest commanders of the German armed forces, as admitted by Henderson himself in his well known book, with the addition that Hitler's decision to march in could only have been made a few days before. There was all the less reason to doubt the accuracy of the description of the preceding events given to him by Hitler, as it was given in the presence of Goering and not contradicted by the latter. With his true and pure character and in view of his entire previous official activity under clean and honest governments, it did not even occur to him that the head of the state, Hitler, could lie to him and give him, at such an important moment, information for answering the British protest, the incorrectness of which was inevitably bound to be demonstrated within a very short space of time. And whom could he really have asked? Only very few men besides Goering had real knowledge and those he could not ask, if only because they were not in Berlin. Goering did not contradict Hitler's description. He also did not -and this I would like to draw particular attention to - sign in his own name, nor on behalf of the absent Foreign minister, the reply which he caused to be drafted on the strength of this description of Hitler's, for which he also did not use the letterheads of the Ministry of Foreign Affairs, but as the wording of the document discloses forwarded the description of the events by order of the Reich Government. The Reich Government, however, was Hitler, or rather on this day Goering. Thus he unmistakably expressed, that he did not write on behalf of himself, taking the responsibility himself, but that rather, like an attorney, he only forwarded the reports of a third person in this case of Hitler.

H0187 – 0037

He cannot be reproached for not having doubted their actual accuracy and for not having re-examined the official description given by the head of the State, -who was Head of the State after all, aside from the fact, that he would not have been in position examine them.

Just as little can he be reproached for the statement, made a short time later to the Czechoslovakian Ambassador Dr. Mastny. Aside from the f that according to the statement of the defendant given under oath the discussion in question came off in a different fashion as was portrayed by the report of Ambassador Dr. Mastny, aiming ostensibly at greater emphasis and effect, the penultimate paragraph of this report -doc. book V No. 141- singularily discloses, that even Mastny interpreted the statement of the defendant- that Hitler had no intention to attack Czechoslovakia and saw himself bound by the provisions of the agreement of arbitration now as before - to imply no permanent guarantee for all future, but only for the inmediate moment, that is until the action against Austria had been terminated. In view of the insufficiently prepared state of the Wehrmacht for war, as confirmed by the defendant Jodl, there was absolutely no reason to doubt the accuracy of this statement, that is to doubt that it actually corresponded with Hitler's wish at that time, in spite of the fact, that the prosecution pointed out Hitler's statements in his speech on 5 November 1937 with regard to the conquest of Austria and Czechoslovakia. For these statements applied only to the possibility of war with other states and to a much later period. Thus, the accusations raised against the defendant by the prosecution in this point are also unfounded. That Hitler already a few months after his speech on 5 November 1937, decided to incorporate Austria into Germany, came as a surprise to all, even his closest collaborators, Aside from the development trends in Asutria this, however, was brought about not at leats by conferences held between Hitler, the defendant and Lord Halifax, the then Lord Privy Council in November and December 1937, in which, according to the deposition upon oath of the defendant, Lord Halifax declared -that the British people would not understand why they should enter into a war, because two German countries united.

(A recess was taken until 1400 hours.)

H0187 - 0038

H0187 - 0039

AFTERNOON SESSION

(The Tribunal reconvened at 1400 hours.)

Once more, in the fall of 1938, the defendant von Neurath took the opportunity to intervene on behalf of the German people, in order to stave of the immediate danger of war. I need not go into details after the coinciding testimony of Goering and other witnesses on how the Munich conference was made possible toward the end of September 1938. It is a fact that its bringing about and its success -- that is an agreement with Britain and France in the Sudeten question -- were due in no small measure to the initiative and co-operation of the defendant.

That, however, he was able to accomplish this is due to but one circumstance, which, in a complete misunderstanding of the situation is also made a point of accusation by the Prosecution. That is the fact, that upon his resignation as Foreign Minister he was appointed President of the Cabinet Council, which had been newly created by Hitler at the same time.

Without being in this position it would not have been possible for him to get to Hitler in September 1938 and to persuade him to agree to the Munich conference. For, contrary to the allegation of the Prosecution, even though maintaining the title of Reich Minister, he was no longer an active Minister that is, a member of the Reich Cabinet -- as from the day of his resignation, which is discernible from the fact that his salary was decreased by one third.

Consequently any co-responsibility of the defendant for the policy of the Reich ceased as from that day. For, contrary to the statement of the Prosecution, as President of the Secret Cabinet Council, he was not a member of the Reich Cabinet and had no access, let alone a seat or a vote, in the Cabinet sessions.

This has been established beyond doubt, by the wording of the decree of Hitler's, creating this secret Cabinet council, for it says there expressly that its mission lies in rendering advice to Hitler personally; that is, solely to Hitler and only in affairs of foreign policy. Even the book of Huber "Constitutional law of Greater-Germany", quoted by the Prosecution under PS 1744, in its attempt to prove the contrary, shows that the Secret Cabinet

H0187 - 0040

Council and its President had nothing whatsoever to do with the Reich Cabinet and were not a branch or an organ of it, but only one of the several of the Fuehrer's personal offices.

As it has been proven by the testimony of Goering, Lammers and other witnesses, the Secret Cabinet Council never started work and was not meant to do so from the beginning. In point of fact, its creation was to bestow a personal honor upon him and was meant to efface the impression that difference had arisen between Hitler and the defendant. That he himself did not look upon his appointment in any other way is proved by the fact that the defendant lived on his estate in Wuertemberg after 4 February 1938 as a private citizen according to hiw own personal inclinations and only very rarely came to Berlin where, however, hewas not and could not be active in any official capacity, since he was deliberately kept from all information on political affairs by th Foreign Office.

If the Prosecution believes that it can conclude from the documents submitted by it under No. 3945 PS, that the defen dant received sums of money from the Reich or the Reich Chancellery for the gathering of diplomatic information, this is refuted -- apart from the defendant's own testimony on oath -- by a letter among these documents dated 31 May 1943 from Amtsrat Koeppen, the Head of the office of the Secret Cabinet Council, which was conducted for appearances sakd -- a letter which proves conclusively that these payments of not very large amounts, made at great intervals to this office, were to cover the cost of maintaining this office and were not intended for any secret purposes or information.

Little as the defendant made use of his position as President of this Secret Cabinet Council, with one exception in September 1938, just as little was he active as a member of the Reich Defense Council, to which he was appointed by the Law for the Defense of the Reich. Here too the Prosecution is making a mistake in turning this membership into an accusation against him and in using it to foist upon him war-like intentions or the support of such intentions.

In view of the manifold discussions about this Reich Defense Council durin the course of the hearing of evidence, I believe I can dispense with a more

H0187 - 0041

detailed examination of this attempt by the Prosecution and limit myself to pointing out that no aggressive tendencies of any kind were contained in these Reich Defense laws, but that, on the contrary, as their contents state, they merely contain -- as is the custom in any state that has to reckon with the possibility of a war -- the necessary provisions for the event of the Reich being attacked or being drawn into a war in some other manner. How one can deduce therefrom warlike intentions of plans on the part of the defendant is, however, utterly incomprehensible.

The defendant furthermore never participated in a single one of the sessions of this council, and no reports about the decisions of this council were ever forwarded to him. The document 2194 PS submitted by the Prosecutio as alleged counter-evidence, was not sent to the defendant at all but to a department of the Reich Ministry of Transport attached to the Government of th Protectorate, namely, the Transport Department -- and was intended for the latter. And its sender was not the Reich Defense Council but the Ministry for Economy and Labor of Saxony.

With all these and similar efforts the Prosecution will never be able to prove that the defendant, by his policies, was at any time directly or indirectly guilty of the crime of planning or preparing an aggressive war or even of approving or assisting such. The opposite is the case.

H0187-0042

All his efforts were bent to one and only one end -- to attain by peaceful means and in a peaceful way only the aims which had been sought by all former democratic governments since 1921; namely, the removal of the stipulations of the Treaty of Versailles which were discriminating for Germany and stamped the German Reich as a second class State, and to bring about a general pacification Europe. Not one of his diplomatic actions served any other purpose or contained any other intention which would involve a crime in the sense of the Charter.

With full justification, therefore, his resignation as Reich Fpreign Minister was received by the whole world with anxiety and dismay, inside as well as outside Germany , especially in conservative circles. I refer to the statemen of the Witness Diekhoff, by which for itself the assertion of the prosecution is refuted, that he was active in these circles as a fifth columnist. What the prosecution to all this points out, with regard to Hitler's speech to his generals inNovember 1939, and still less with regard to the speeches by the defendant himself of 29 August and 31 October 1937, will alter none of those facts at all. Hitler's speech was held at the time of the first military successe and was calculated as laying claim to the success of his, Hitler's state leadership and should only be valued at this face-value. The speeches made by the defendant, however, say just the opposite of what the prosecution likes to interpret into them. For both speeches, contained in my doc. book IV No. 126 and 128, emphasize quite expressly the successful pacific intentions of the German Foreign policy conducted by the defendant, and emphasize especially that the gained successes were obtained exclusively by peaceful means and not by means of force. Especially the speech of 31 October 1937, the least public speech of the defendant as Foreign Minister, frankly represents a resume of his policy of peace. That this resume was and is correct, the prosecution itself had to admit in this room when, in the words of one of the prosecutors, it expressly denoted Hitler's speech of 5 November 1937 as the turning point in German foreign policy, a speech which had been taken by my client as an excuse for his resignation; and the prosecution thereby acknowledged unequivocally that, up to that day, German foreign policy had not been aggressive, had not bee a policy of force, hor pursued any plans or intentions of war, but had been thoroughly peaceful and could not have been otherwise, in accordance with the

H0187 - 0043

defendant's confession of political and human faith which has been confirmed by all witnesses questioned here and in all of the questionnaires and affidavits contained in my document-books.

This declaration of faith was founded upon three basic pillars: human love, love of the fatherland, and love of peace, all three born of and supported by a very deep sense of responsibility towards himself, towards his God, and towards his people.

When a few days after the occupation of Czechoslovakia Hitler called the defendant to Vienna from his well-deserved otium cum dignitate on his farm and revealed to him that he had been selected as Reich-protector for Bohemia and Moravia, he felt himself obliged to answer this call as a result of his sense of responsibility. He resisted it to begin with and struggled with himself a long time, as he had always been the stfictest opponent of interferenc not to speak of a more or less forceful annexation of other nations to the Germa Reich.

For this reason he also condemned the annexation of Czechoslovakia and the so-called protective alliance signed by President Hacha, and this without th least knowledge at that time how it really came about. The true details of this incident became really known to him first here in Nurnberg.

Although he opposed accepting a public office once more, and especially at his age, and to take again service under Hitler and his regime, of which he heartily disapproved, he became convinced, due to his sense of responsibility towards his people and his humane principles, that he should not deny himself to this call. When Hitler explained to him that he had selected him as the sole personality suited for bringing about successful reconciliation, intended by him, of the Czechoslovakian people with the new conditions and with the German people, he could not close his eyes to the knowledge that he would be given a task which he could not evade in the interest of the German people as well as humanity and international understanding. And was it not atask indeed worthy of the "sweat of noble", through a human and just government and treatment to appease a people which would regard every restriction and encroachment on its liberty and autonomy as the worst injustice imposed, and which would be filled with the bloodiest hatred and resentment against a people perceived as the intolerable oppressor; to reconcile with just this people and the conditions directly created by it.

But was not this aim along the same lines as the tendency of ensuring and

H0187-0044

preserving peace? And he could and had to say to himself with justification that if he refused this task, another man from Hitler's entourage would in all probability be nominated Reich-Protector who was not able or willing to appease the Czech people by humane and just treatment and was, on the contrary, much more inclined to hold it down by force and terror, as actually happened 2½ years later. It was only as a result of these thoughts and reflections that he decided to accept the appointment offered him, eliminating all personal interests and even setting aside the risk that this might be interpreted and held against him in some quarters as an act of approval and support of Hitler and of his regime, since Hitler had explicitly and firmly promised him that he was at all times willing to support his (the defendant's) intended policy of appeasing and reconciling the Czech people by humane and just treatment which did justice to the interests of the Czech people to the greatest extent.

He was conscious of the weight of this task he had accepted. I do not hesitate to admit that it was here a question of a decision, to justify which could -- from the point of view put forward here by the British prosecutor that it was immoral to remain in a government, which should be rejected because of its amorality -- cause embarrassment in the case of a personality formed differently from and with a different attitude in thought and action than that of the defendant von Neurath; but that, in view of the personality of von Neurath, which I hope has been described to you sufficiently and clearly, and in view of his profound sense of responsibility, this decision was the only possible and logical one. It is actually pertaining to an antique tragedy that the failure of this mission, which had been assumed out of the highest ethical motives only, has brought the defendant von Neurath into this dock.

I should like to declare what follows at this point already, concerning the prosecution's attempt to present as unworthy of belief the defendant's assertion that he had assumed his office as Reichsprotektor only with the purpose and the object to appease the Czech people by safeguarding, to a large extent, its interests and its nationality and, accordingly, to be of service to this people and to its national prosperity, as being disproved by the photostatic documents submitted by the prosecution under No.3859, consisting of a letter of the defendant to the Chief of the Reich chancellory Lammers dated August 31st 1940.

H0187 - 0045

I believe that the second examination of the defendant, which has been readily granted to me by the Tribunal, has proved that those documents, particularly the two reports annexed to the letter to Lammers, which indeed are not consistent with the designs and tendencies of the defendant as mentioned above, do not form any evidence. Not only do those photostatic copies by no means correspond, according to the definite statement of the defendant, to the contents and the form, e.g. the length of the originals annexed to the Lammers letter, which had been submitted to the defendant for signature and respectivel approved by him, but they provoke more than reasonable doubts whether the photostatic copies of said documents are indeed identical with the annexes to the Lammers letter, owing to the following facts:

In contrast to the custom of all administration-offices, both photostatic copies do not contain the references of the Lammers letter, not even a note that they are annexes to a third paper, let alone to the Lammers letter. And the photostatic copy of the first copy does not bear the defendant's signature, which, according to his definite statement, he had added when signing the letter to Lammers, beneath the report annexed to the Lammers letter, which report had been done by himself or by his office according to his instructions and which had been submitted to him in a fair copy.

It is striking that it only bears a remark stating the correctness which should have been, but actually was not, signed by a SS-Obersturmfuehrer working in the office of Secretary of State Frank. Those facts warrant the defendant's assertion that, if the reports whereof the photostatic copies have been made have indeed been annexed to the Lammers letter, they have been substituted to the original report of the defendant and to Frank's report as approved in the draft by defendant, in the office of secretary of state Frank, either by the latter or by his order. Furthermore, the defendant's statement is quite worthy of credit, made in order to explain the fact and the purpose of this Lammers letter and its annexes, viz. that he wanted to try, just as according to the plan contained in general Friderici's report dated October 15th 1939, submitted under US 65 L 150 - to induce Hitler by both reports sent to him, as well as by

oral report, to abstain from a division of the Protectorate territory and from a Germanization of the Czech people in any form whatever and to prohibit any similar plans at all, a course which the defendant expressly refused to sustain for all possible reasons, act in the last in the interest of the Czech nation entrusted to him and of its national character and unity. These assertions of the defendant are confirmed by the statements of the witness von Holleben in the questionnaire answered by him -- doc. book V Nr. 156 -- of the witness Dr. von Burgsdorf, as well as by the letter of the defendant to Baroness Ritter - as literally quoted by the latter in her affidavit - doc. book Nr. 3. And the defendant has actually succeeded in carrying his point, as proven by the report of his conversation with Hitler submitted by the prosecution.

As long as he was in Prague, no steps have been taken for any Germanization of the Czech nation; the defendant has even prohibited the discussion of this entire question, as proven by document 3862-PS submitted by the prosecution. By this prevention of any division of the Protectorate territory and of any more or less forcible planned Germanization of the Czech nation, it is actually proved, in the clearest possible manner, how sincere the aims and endeavours of the defendant were to save and to keep the Czech nation and its nationality in its national unity and character, true to his principles and designs, as stated publicly in his article reproduced by the Frankfurter Zeitung of March 30th 1939 -- doc. book V. Nr. 143 -- concerning the new order of central Europe, as forming the rule of conduct for the accomplishment of his duty.

H0187 - 0046

H0187 - 0047

He himself defines in this article his task as a fine one, but as a difficult one too. How difficult it really was, how nearly impossible, was to be proved unfortunately but a little while later.

The reason was in the first place that from the beginning not only the full power in the Protectorate had not been transferred to him, that never - quite aside from his subordination under Hitler - had he received a solely decisive and overruling position, but also that his competences and power were not defined sharply enough. It is true that Hitler's decree of March 16th 1939 establishing the Protectorate, and the supplementing decree of March 22nd 1939 - doc. book. V. Nr. 144 and 145 - had decreed that the Reichsprotektor was put under the control of the Fuehrer and Reich chancellor, that he was to be the Fuehrer's and the Reich government's sole representative and was to receive his directives from the Fuehrer and from Reich chancellor. But at the same time not only certain administrative branches, such as Wehrmacht, communications, postal, telegraphic and telephone services, were from the beginning, placed out of his competence, but also the Reich government and the Reich itself had been given the right to take under their own administration, as Reich administrations - so-called "reichseigene" - independent of the Reichsprotektor, administrations which actually were Reichsprotektor offices, and to establish, if necessary, Reich offices, which did not fall under the Reichsprotektor's competence. The Reich had also received the right to take measures necessary to maintain security and order in the Protectorate, over or the head of the Reichsprotektor himself. Furthermore - and this is the most important point of all -, the right was granted to every one of the many supreme Reich authorities, i.e., not only to the Reich ministries, but, e.g., to the Reichsbank, the Four Year Plan, the Council of Ministers for Reich Defense and others, to decree laws and organizational measures on their own authority quite independently of the Reich Protector, and therefore to interfere in branches of the administration which, by their nature, belonged to the competence of the Reich Protector, without the Reich Protector having either the

H0187 – 0048

right or the possibility to protest against, or prevent such decrees or measures should they be in opposition to his own decrees, measures and policy. On the contrary it was his duty not only to publish them in the protectorate if asked to do so, but also to supervise their execution. Therefore the position of the Reich protector was - using an example as explanation - by no means the same as, e.g., that of the British Viceroy in India, but corresponded far rather - though to outward appearances a somewhat higher level - to the position of a Reich Governor or the President of a province. This position therefore did not correspond to what had hitherto been understood constitutionally by a protectorate, nor could it, because this so-called Protectorate of Bohemia and Moravia belonged, according to Article 1 of the above mentioned decree of 16 March 1939 - and to this I wish to draw particular attention here, - to the territory of the German Reich, that is to say it was a part of the German Reich. And it only possessed a certain amount of self-administration and a limited autonomy within the Reich as a part of it, whereby the introduction of laws and regulations valid in the rest of the territory of the Reich was a priori understood. It is self-evident that the greatest difficulties were bound to result very soon from this so vague and indefinite delimitation of the powers and competence of the Reich-protector - difficulties not only for a homogeneous points of view and guiding lines, but also for the defendant himself as Reich Protector in governing in the way he wished and which he had embarked upon difficulties and resistances which became more and more acute in the course of time. On the other hand it also follows from the above that the responsibility of the defendant can only be judged from this point of view i.e. only by taking into account these various competences of all kinds of other authorities. He can never be made responsible for decrees, measures and actions which he did not decree or order himself - which, on the contrary, were decreed without his co-operation, without his knowledge, even against his will, by authorities or other offices outside his sphere of power and influence - decrees, measures and actions which he had neither the right nor the power to prevent

H0187 - 0049

and for which he was at most a transit office.

This holds good in the first place for the joint responsibility attributed to him by the Czech prosecution (USSR 60-a) for all the actions of Hitler and of the Reich Government before and after the creation of the Protectorate. The assertion which forms the foundation and presupposition for this - the prosecution assertion that Herr v. Neurath, after having given up his post as Reich Foreign Minister, remained a member of the Reich Government - is factually wrong. I have already proved elsewhere beyond doubt that he was not a member of the Reich government, neither as a minister without employment now as president of the Secret Cabinet Council. And he was just as little a member of the Reich government as Reich Protector. That, too, is certain and has never been claimed by the prosecution before this court. Therewith any part-responsibility of the defendant for any actions or measures which preceded or prepared the setting up of the Protectorate, is out of the question. I have also already proved elsewhere that his statement to the Czechoslovak Ambassador on 12 March 1938, which he has been reproached with here again as being such a preparatory action, was not false, not deceitful, and was therefore not an action preparing the March in to Czechoslovakia.

If the Czech prosecution further draws the conclusion from Article 5 of the above-mentioned decree of 16 March 1939, that, as Reich Protector, he was responsible without distinction for every thing that occurred in the Protectorate during the time he was in office, i.e. from 17 March 1939 to 27 September 1941, this conclusion is also factually wrong and false, in view of the actual position with regard to competence in the Protectorate, as explained above. There is no system of law in the world according to which one can charge a person with criminal responsibility for occurrences and acts by third persons, in which he did not participate, or cooperate or which even occurred against his will.

Thus he cannot be made responsible for the fixing of the rate of exchange between the Reichsmark and the Czech crown, because this rate had already been fixed when he took over office; he neither

H0187 - 0050

had any hand in fixing it nor had he the power or right to change the rate of exchange; we can here very well leave aside the question whether, as the prosecution maintains without proofs, the rate of exchange was detrimental to the Czech people or not. That, by the way, even if the latter were the case, this would not be a crime according to the charter - and only as such would it be punishable - hardly needs to be stressed.

He can just as little be made responsible for the creation of the customs union and its execution. This had already been laid down in Article 9 of the decree of 16 March 1939, which says literally: "The Protectorate belongs to the customs area of the German Reich and is subject to its sovereignty as regards customs." This regulation was a natural consequence of the already stressed fact that the Protectorate was a part of the territory of the German Reich. However I would like to draw special attention here to the fact that the defendant, because he regarded the absorption of the Protectorate into the customs area, the customs sovereignty of the Reich, as detrimental and harmful to Czech economy, managed to postpone the execution and realisation of this absorption for a year and a half, till 1st October 1940 in spite of all the urgings of the Reich Finance Minister, which is clear proof that the defendant put the interests of the Czech people who had been confided to him, above the interests of the German Reich. He had absolutely nothing to do with the economic measures consisting in the alleged transfer of Czech banks and industrial enterprises and the alleged filling of the key positions in them with Germans. These measures were taken by other offices, especially by the Reich bank and the Plenipotentiary for the Four Year's Plan, behind his back and without his collaboration. Besides, they were the natural result of the circumstance that already in earlier times very important German capital had been invested in these banks and enterprises, and this capital increased after the occupation, because the credits given by other countries were withdrawn by them and taken over by German firms.

H0187 - 0051

Lastly, he had nothing whatever to do with Jurisdiction. The latter was under exclusive control of the Reich Minister of Justice. He alone established the German courts including summary courts and prosecuting authorities, he only appointed judges and prosecutors. Herr v. Neurath himself had nothing to do with this and still less with the jurisdiction of the courts, as is clearly shown by the ordinances and decrees which established them, especially the decree concerning the execution of criminal jurisdiction of April 14th 1939 - Doc. Book, Vol. No. 147.

At this point too, however, it must be emphasized that neither the economic measures nor the establishment of German courts in the Protectorate, which was a part of the German Reich, even remotely fall under the category of crimes punished by this Charter. Just as little do fall under these crimes the alleged intrusions into Czech school organization, the appointment of German school inspectors, measures with which the defendant has been charged in the Czech indictment, and measures also were not taken by him, but by the German Reich Ministry of Education and Instruction. And the closing of a large number of Czech secondary schools has not been ordered by the defendant at all, nor by the German Reich Ministry, but actually by the Czech government itself, according, it is true, to a suggestion made by the defendant. This measure turned out to be useful and in agreement with the interests of the Czech youth and, therefore, of the Czech intelligentsia and people, by preventing the formation and growing of a large educated proletariat. This danger had become acute because, after the incorporation of the Sudeten German territory into the German Reich in the autumn 1938, a very large number of Czech officials and members of the free professions had streamed into the territory of the Protectorate, which, in conjunction with the already existing overcrowding of all higher professions, and in view of the diminution of the Protectorate territory owing to the separation of the Sudeten territory and Slovakia still more diminished the possibilities for getting employment and remuneration for the upgrowing pupils in secondary schools.

H0187 - 0052

Additionally to this came the closing of universities, in the middle of November 1939, according to a personal order of Hitler. The Czech government could not deny the truth of such considerations of the defendant, and decreed itself the closing of quite a number of schools. The defendant did not exercise any pressure on the Czech government. This had been proven by the evidence.

H0187 - 0053

The dissolution of Czech gymnastic and sports clubs and similar organisations however, was done without knowledge or participation of the defendant, by the police, which was not controlled by him, neither did the confiscation and the use of their assets. It is not even certain, by the way, whether this idssolution has taken place while the defendant was holding office or after his departure. The dissolution of the Sokol, it must be said, was a real necessity for the government, to protect German interests, and moreover a measure which was taken in the interest of the pacification and reconciliation of the Czech nation too, as the Sokol was, beyond doubt, the focus of anti-German efforts and of the incitement to the Czech people toward an active resistance against everything which was German.

The preceding arguments show, how manifold were the encroachments of other administrations and offices on the administration of the Protectorate, and, accordingly, the difficulties and resistances against a Uniform policy of the defendant. Those were, however, by no means removed, but on the contrary, aggravated by the decree of September 1st 1939 concerning the organization of administration and of the German Security Police -- document book V No. 149-. This decree has been issued, without any previous contact being made with the defendant, by the Council of Ministers for the Reich defence. Especially in its first part, it is absolutely obscure and misleading. True, it placed all German administration offices and their officials in the Protectorate under the control of theReichprotector, but this subordination was an administrative one only, i.e. a purely external one, but not at the same time an actual one with a view to the administrative duties which they had to perform.

In this respect, things remained unchanged, as results already from the power of the supreme Reich offices according to article 11 of the decree of March 16th 1939 and of the ordinance of March 22nd 1939. The difference was only that from now on all administrations and offices established or to be established by other offices were formally attached to the Reichsprotektor's office and were officially to be known as departments of the administrative designation "The Reichsprotektor of Bohemia and Moravia". However, this did by no means ensure that such attached departments were put, in fact, under control

H0187 - 0054

of the Reichsprotektor himself, i.e. the defendant, that they received from him their actual directives and orders and had to work according to his views and following his directives. On the contrary, they received their instructions, just as before, from their original Reichoffices and had to observe and to obey only these. For instance, the so-called transportation department constituted accordingly at the Reichsprotektor's, which dealt with the communication - system already taken out of the Reichsprotektor's jurisdiction by ordinance of March 16th 1939 - was controlled, just as before, by the Reich Ministry of Communications, and not by the Reichsprotektor, and had to get instructions not from him but from the Ministry in Berlin. And the same applied to other sectors, also concerning purely interior administration.

According to this ordinance of September 1st 1939 of the Council of Ministers for the Reich defence, and not, as the Czech prosecution erroneously contends, by a decree of the defendant, a new division of the Protectorate territory was created, into Oberlandratsbezirke with an Oberlandrat at their head, which official is, according to para. 6 of the ordinance, the competent administrator for all administrations of interior administration, and subordinate to the Reichsprotektor in an administrative sense; as such he is invested with far-reaching authority, and also controls the Czech authorities in the Protectorate, and this, not by the order of the Reichsprotektor, but of the concerned Reich Ministry in Berlin. This too was bound to cause very serious differences and oppositions between the measures taken by these Oberlandraete according to the directives issued to them by the Reich Ministry of the Interior in Berlin and the policy pursued by the defendant. Insofar this latter affected and influenced the Czech administrative offices, can remain out of consideration, as this decree too and its result, the switching-in of Reich German officials into the activity of the Czech administration, is no crime punishable according to the Charter of this Tribunal. This decree too is but a result of the belonging of the Protectorate to the Reich.

On the other hand, this decree clarified the question of the position of the police within the Protectorate territory, as well of the political as of

H0187 - 0055

the security police. This question was quite unsettled until the decree came into force and had led to differences and inconveniences between Herr von Neurath and his Secretary of State Frank, from the first day of the former's activity on.

At the time Hitler charged the defendant with the office of the Reich Protectorate, he had according to the defendants testimony, assured him of a great plentitude of power, especially for the protection and fullest assistance in such policies of the defendant as were intended to achieve conciliation and balancing of the radical aspirations of the party and other shauvinistic circl The defendant deduced from this, that as the representative of the Fuehrer in the Protectorate he must and will have a decisive influence in the activity of the police also. According to his own testimony he could not visualize at that time that by the fact that the police had not expressly and from the beginning been subordinated to him, a large part of the sphere of activity expected by him became illusory from the beginning. By simultaneously appointing Frank -- who had just been made higher SS and Police Fuehrer in the Protectorate -- to the position of Under Secretary and as such subordinating him to the defendant, he could however derive Hitler's intention to centralise power of authority over the police, if not in his own person, at least under his jurisdiction e.g. his Under Secretary. In practive however this relation worked out entirely differently since Under Secretary Frank had not the slightest intention to include his superior, the defendant, into the sphere of activity of the Police a recognised only the jurisdiction and power of authority of Himmler, respectivel of the Main office for security of the Reich (Reichssicherheitshauptamt), his superior as SS and Police Fuehrer.

This actual condition was determined by law in a decree on 1 September 1939:

For this decree unequivocally expresses that the German Security Police, and thereby also the Gestapo, was not subordinated to the Reich Protector. This is already evident purely outwardly from the fact that the decree completely separates both departmental spheres - Administration and Police - by dealing in part 1 with the building up of a German administration in the Protectorate subordinated to the Reich Protector and dealing in part 11 completely separately with the German Security Police. This Security police is not under the jurisdiction of the Reich Protector but, as was already reserved in Article V, par 5 of the decree of 16 March 1939, is taken over by the administration of the Reich itself, that is to say, it receives its orders direct from the Chief of Police in Berlin, i,e. Himmler and in part also by the interpolation of the highest SS and Police Chief in Prague. For rhe relations of the police with the Reich Protector, the second sentence of paragraph 11 is authoritative. Its wording is as follows: "The organs of the German Security Police are to collect and exploit the results of their investigations, in order to notify the Reich Protector and his subordinated offices accordingly about important events and to keep him informed and give him suggestions."

This signifies that the Reich Protector was legally and actually unable to influence the activities of the police in any form whatsoever. He could not oppose their orders, wmanating from Berlin, prior to their execution; quite apa from the fact that he never got to see them and had no authority to oppose them either. He had but one claim and that was to be subsequently informed by the police about measures already taken by them and even that happened - as was proved by the evidence - only in the rarest cases.
He did not have the right or the possibility to issue orders to the police himself.

In consequence of this separation of powers and in view of the totally different attitude of Frank as compared to Herr v. Neurath's the sharpest differences and contradictions were inevitably bound to result. For Frank, as a Sudet German and one of the leaders of the Sudeten Germans was filled with hatred and revenge against anything that was Czech. He did not want to hear of a reconciliation or an undrstanding between the German and the Czech peoples, and gave free rein to this anti-Czech frame of mind of his from the first day of his activity.

At first, that is to say, up to the time of the outbreak of the war, the

H0187 - 0056

activity of the police was actually slight, so that these opposing viewpoints were not so apparent. Herr v. Neurath could consequently assume that this opposition would gradually diminish and that Frank would conform to his wishes an aspirations and would show himself to be accomodating and he, the defendant, did not yet recognize the necessity of exerting a lawfully founded influence upon the police through Frank. When, however, he finally had to realize - from the gradually increasing activity of the police and their excesses - that his expectations were not being fulfilled, he protested to Hitler orally and by letter, time and time again - as confirmed by the testimony of the witnesses Dr. Voelckers and von Holleben - and implored him to alter this ominous state of affairs and to subordinate the police to him, and him only.

H0187-0057

H0187-0058

However, all Hitler's promises and assurances proved false, and the subordination of the police to Herr von Neurath did not take place. Yet, he did not want to reliquish the fight so soon, nor despair of the task taken over by him. Now more than ever he wanted to try to impose his ideas and policy, and, should he have been successful, at least to diminish and alleviate subsequently the consquences and harshness of the measures taken by the police in general and individually. That, for this purpose, he had the most detailed account given to him personally in all cases of measures and action taken by the police, such as arrests and othe excesses in so far as he recieved information about them, mostly from Czech sources, and that, wherever he could, he exerted his influence for the release of arrested persons and other mitigations is evidenct from the testimony of all witnesses produced by me, above all, from the testimony of Dr. Welckers, who, as Head of the defendants Office, was continually engaged in receiving such complaints.

This is moreover evident from documents submitted by the prosecution themselves, such as the notes of the defendant about his conference with President Hacha of 26 March 1940 - App.5 to supplemtn No. 1 USSR 60 - and even from the testimony of Bienert, added to the special accusation, who himself was arrested by the police and again released in a very short time upon the intervention of the defendant.

With the one exception of the testimony of Frank of 7 March 1946, submitted during the hearing of evidence, the testimony of all witnesses corresponds on the question of responsibility of the defendant for the measures taken by the police.

At his interrogation on 30 May 1945 - Doc. book V Nr. 153 - Frank said, quote: "The police, however, was not under the control of the Reich Protectorate. Both, Gestapo and Security police, received their directions and orders directly from the Reichssicherheitshauptamt in Berlin. Frank's statement of 5 May 1945 concerning the students' riots - Doc. book V No. 152 - is also typical for the manner in which the police received its instruction directly from Berlin leaving out the Reichprotectorate. Frank speaks therein of the report about the first demonstrations, he had sent to Berlin and in which he had asked for instructions

and had received them directly from the Fuhrer's headquarters through the Security Police in Prague, to which they were sent by Berlin directly and he, Frank, received them from there. There is no mentioning whatever of the person or even of the office of the Reich Protectorate during the entire proceedings, it is an internal affair of the police taking in Frank, the leader of the higher SS and police. Because of the importance of this point, I would like to refer explicitly to the statements, made by the witnesses von Burgsdorff and Voelckers, who both were, on the basis of their official position, thoroughly conversant with this question during the entire time the defendant was in office, Burgsdorff testified that the police was under Frank, who received his orders directly from Himmler. Voelckers said that the defendant had no influence on Frank's activities, and thereby on the police. In practice, the police and, therefore, also Under Secretary Frank were from the beginning completely independent from the defendant,

H0187 - 0059

This was legally sanctioned later through the order of 1 September 1939. All witnesses, also in their written testimonies, testify that the relations of th defendant Frank had been as bad as imaginable.

It is entirely impossible in this case that the chief of the SD and the Security Police should have been active as political adviser to the defendant. The defendant cannot at all remember a decree from May 1933 about the appointment of this man to which reference is taken in the document by the chief of Security Police (USSR 487). In any case, according to his definite statement, he never carried out any function. The document, USSR 487, therefore does not appear to have any proof of evidence. The copy submitted to me by the Tribunal is dated 21 July 1943. That alone proves that the appointment of the SD leader, if it occurred at all, was not given any effect during the defendant's entire time in office. Aside from the date, however, the result is that, in "Reference to the letter...", this appointment does not at all concern a political adviser to the Reich Protector in person but the Under Secretary for the Security Servic namely Frank. The address "Der Herr Reich-Protector" is to be understood in a way that it does not mean the person but rather the office. In German Government circles it was customary to speak of the Herr Reichminister etc., even though he was not meant personally but any department of his office. It is entirely credible and probable that the SD leader was appointed political adviser to the Under Secretary, who at the same time was Under Secretary to the office of the defendant and independant Under Secretary to the Security Service.

Just from the so-called warning given at the end of August 1939, with which the Tribunal reproached my client it can be seen how he himself felt about the ways and means of easing the minds of the population and to hinder, that is, prevent violence and insubordination. According to his sworn testimony, the defendant thereby succeeded in discouraging the population from committing acts of violence and especially to prevent acts of sabotage, which were to be expected in this time of political high tension before the war and thus in preventing harsh police and legal measures which would embitter the population even more. It is doubtlessly more human to issue such a warning and thereby to prevent the committing of crimes instead of letting crimes be committed without previous warning and afterwards to give severe punishment. That acts of sabotage. if it was impossible to prevent them, were severely punished in those times, would

H0187-0060

certainly have been acknowledged also in any other country and is a matter of course.

As the defendant testified, the warning had fulfilled its purpose. No special punishments were threatened or determined; it contained no special threats of punishment whatever, but referred, as the wording proves, to crimina law already in force.

The sentence, that the responsibility for all acts of sabotage affected not only the culprit but the entire Czech population, is, of course, concerned only with the moral responsibility and not the legal one, as was also confirm by the defendant.

It means that in the case of repeated heavy acts of sabotage, general measu would be taken in the respective territories, as for example, earlier curfew, ban on going out or general stoppage of traffic or electric current, under whic the entire population would have to suffer. A collective responsibility in the legal sense would have to be formulated much more concretely. It was expressly mentioned at the beginning of the proclamation that everyone who committed the cited crimes thereby proved himself to be an enemy of the Reich and would be punished accordingly. This sentence especially shows that the legal treatment of such sabotage acts would have been carried out individually.

At that time nobody in Prague, not even the chief of police would have thou of the idea to decree a general punishment, or even, as the Prosecution asserte without any evidence whatever, to establish the hostage system. In this connect ion I also wish to refer to the statements made by the witness von Holleben Document book von Neurath 158, in which he states: "Neurath therefore always refused to make a person responsible for acts, committed by somebody else".

From all that has been said previously, results further show that the defen ant von Neurath cannot be made responsible for the arrests made at the time of the occupation of the Czech territory nor for the arrests of, as the Prosecutio asserts, 8000 promenent Czechs as hostages and their being taken to concentrati camps, ot their execution at the outbreak of the war.

H0187-0061

H0187 - 0062

These arrests, according to the defendant's testimony, with which Frank's testimony agrees were made on direct order from Berlin without knowledge and information of not only the defendant, but also of Frank himself.

Bienert's contradicting testimony presented by the Prosecution is objectively incorrect and is based on completely illogical and false deductions. His deduction that this entire action was under the defendant's direction because his order for Bienert's release had been issued already four hours after his arrest is without any logic and is objectively wrong.

On the basis of the evidence, it is finally irrefutable that the defendant is not responsible for the order to shoot nine students and to arrest approximately 1200 students during the night from the 16th to the 17th November 1939; that these measures actually to be called terror actions had been ordered during his absence from Prague without his knowledge by Hitler personally and had been carried out on his direct order by Frank, and that also the proclamation of 17 November 1939, announcing it, was neither issued nor signed by him; that on the contrary his name under it had been misused.

It is unanimously proven by the testimony of the defendant himself, and by that of the witness Dr. Voelckers, who accompanied the defendant on his trip to Berlin on 16 November 1939, the day of the students' riot, and had returned from Berlin to Prague with him together but on the afternoon of the 17th, furthermore by the written testimony of Mr. von Holleben and finally by the affidavit of the defendant's secretary, Miss Friedrich (document Book V, No. 159) and of the Baroness Ritter, the defendant was in the night of the 16 to 17 November, when the shootings and arrests took place, not even in Prague but in Berlin and the publication of these incidents was already posted on the house walls of Prague when the defendant returned to Prague.

The defendant is not in the least responsible for these atrocities. The order for it as well as the simultaneous order for

H0187 - 0063

the closing of the universities had, on the contrary, been given direct to Frank by Hitler in Berlin and this, as the witness Voelckers expressly affirms, in the absence and without the knowledge of the defendant. What value can, in contrast to that, be ascribed to Dr. Havelka's testimony, presented by the Prosecution, is self-evident.

The credibility of this witness Havelka, as well as of all the other Czech testimony submitted by the Prosecution, must in general be examined with the very greatest caution. They are subject from the first to two very serious objections. Firstly, all these witnesses are members of the former autonomous Czech government, i.e. the so-called collaborationists who are in jail today for this reason and are awaiting sentence. It is humanly only too readily understandable if today they not only see the conditions obtaining then in a different light, judge them differently from what they really were and involuntarily mix in their memory the terrible things which happened after Herr von Neurath had left Prague with the events while he was there. This results in a haziness of their memory. We must, also, not overlook, the fact that, in a quite natural effort, they hope by incriminating Herr von Neurath to clear themselves. Added to this is the fact, which is almost more important still, that they had no knowledge whatsoever and could have none of the internal factual and legal conditions within the office of the Reichsprotector and that they therefore are not able to judge to what extent the defendant himself was really the man who issued the individual decrees and orders or brought them about. One example shows this very clearly.

In the witness Kalfus' testimony it is alleged that the defendant was responsible for the customs union between the Protectorate and the German Reich. I hereby wish to refer only to the fact that already in Hitler's decree of 16 March 1939 it had been expressly announced that the Protectorate belonged to the customs district of the Reich. The witness Bienert further asserts that it was Herr von Neurath who subordinated to the Germans the political

H0187 - 0064

administration of Bohemia and Moravia, which means state as well as communal administration. This is, however, also objectively wrong. As I have already proven, this subordination was ordered by the decree of 1 September 1939 which was not issued by the defendant but by the ministerial council of ministers for the defense of the Reich.

These examples should suffice to show how little credible all these testimonies are and how little the witnesses were informed about the actual organization and competences within the office of the Reichsprotector.

The repeated assertion of the witnesses that the arrest and many other measures of force by the Gestapo against the Czech population was done on the order or instruction of the defendant personally is, for example, either a deliberate falsehood or proof of their ignorance of even the published official decrees which were announced in the Czech official gazette.

Because the Gestapo, as I have already proven, was not under the command of the defendant, the conclusions from this for the credibility of the witnesses are self evident. It is obvious that in contrast with it the sworn testimony of the defendant and of the witnesses, presented by me, together with the pertaining decrees submitted deserve much more credibility.

The allegation of the Czech Indictment and of the testimony on which it is based that Herr von Neurath, in the middle of November 1939, ordered the closing of the universities has thus been disproved as objectively wrong. In fact, the closing of the universities took place on the express order of Hitler. As the evidence has shown beyond any doubt, the defendant has immediately protested to Hitler and succeeded in obtaining his promise to reopen the universities after one year instead of only after three years. The defendant cannot be blamed for the fact that Hitler then did not keep his promise. His efforts for the revocation of the closing of the universities prove, however, how much he was interested in maintaining the educational standard and the intellectual class of the Czech nation.

H0187 - 0065

And just as in this case, the defendant worked wherever he could for the Czech nation in its entity and for the individual. This applies especially to the harmful activity of the police and the Gestapo as far as he received information about it. According to his own testimony,

H0187 - 0066

which is confirmed by that of the witness Dr. Voelckers, he had, immediately after the arrest of the students in the middle of November 1939, used all his influence with all energy and continually for their release, and, as we have heard here, not only out of his own mouth, but also from Dr. Voelckers, he succeeded in obtaining the release of almost all the students up to the time he left Prague on 27 September 1941. And he worked in the same way continuously for the release of about 8,000 prominent Czechs who were arrested at the beginning of the war. As proved by his own testimony to the truth by the Czech witnesses Bienert, Krejci, and Havelka, not even by Frank or by another higher SS or police chief in the Protectorate, but by Berlin directly. It is due, by the way, to the defendant that in 1941 the order Hitler issued at Frank's and Himmler's instigation for the removal and arrest of the then Czech Primie Minister General Elias was rescinded by Hitler because of his personal intervention. Only after he had left was Elias arrested by Heydrich and later condemned to death by the peoples court.

Definitely wrong is the allegation of the Czech witness Bienert that the defendant had arranged for the transporation of Czech workers into the Reich, that is, deprted Czech workers by force into Germany. It is rather true that, during the whole term of office of the defendant not a single Czech worker was deported by force to Germany.

For the rest, until September 27 1941, no compulsory deportations of laborers had yet taken place in any territory occupied by Germany. That happened later. But many Czech laborers voluntarily and gladly went to the Reich and accepted jobs there, as they earned, owing to the established currency exchange rate and to higher wages, much more than in Prague, and could send to their relatives in the Protectorate very important parts of their earnings.

When, furhter on the Czech Prosecution wants to charge the defendant with the sending by the Gestapo of arrested persons to concentration camps, and with the ill-treatment committed there on those individuals, then it must be established with the utmost precision that until September 27th 1941, the end of the official activity of the defendant in the Protectorate, there was not even a single concentration camp in the Protectoate. They had all been established under his successor only, after his departure. They decree

H0187 - 0067

which is confirmed by that of the witness Dr. Voelckers, he had, immediately after the arrest of the students in the middle of November 1939, used all his influence with all energy and continually for their release, and, as we have heard here, not only out of his own mouth, but also from Dr. Voelckers, he succeeded in obtaining the release of almost all the students up to the time he left Prague on 27 September 1941. And he worked in the same way continuously for the release of about 8,000 prominent Czechs who were arrested at the beginning of the war. As proved by his own testimony to the truth by the Czech witnesses Bienert, Krejci, and Havelka, not even by Frank or by another higher SS or police chief in the Protectorate, but by Berlin directly. It is due, by the way, to the defendant that in 1941 the order Hitler issued at Frank's and Himmler's instigation for the removal and arrest of the then Czech Primie Minister General Elias was rescinded by Hitler because of his personal intervention. Only after he had left was Elias arrested by Heydrich and later condemned to death by the peoples court.

Definitely wrong is the allegation of the Czech witness Bienert that the defendant had arranged for the transporation of Czech workers into the Reich, that is, deprted Czech workers by force into Germany. It is rather true that, during the whole term of office of the defendant not a single Czech worker was deported by force to Germany.

For the rest, until September 27 1941, no compulsory deportations of laborers had yet taken place in any territory occupied by Germany. That happened later. But many Czech laborers voluntarily and gladly went to the Reich and accepted jobs there, as they earned, owing to the established currency exchange rate and to higher wages, much more than in Prague, and could send to their relatives in the Protectorate very important parts of their earnings.

When, furhter on the Czech Prosecution wants to charge the defendant with the sending by the Gestapo of arrested persons to concentration camps, and with the ill-treatment committed there on those individuals, then it must be established with the utmost precision that until September 27th 1941, the end of the official activity of the defendant in the Protectorate, there was not even a single concentration camp in the Protectoate. They had all been established under his successor only, after his departure. They decree

H0187 - 0068

too, concerning security and preventive custody, which the Czech Prosecution appears to charge him with too, has, as shown by the copy annexed to the Czechreport (USSR 60), been issued but after his departure, but that was on March 9th 1942.

Lastly, concerning the charges of the Indictment about the alleged measures taken by the defendant against the Jews, in this point too the representation of the Indictment does not fit the facts and is shown to be erroneous on closer examination of the documents submitted by the Prosecution itself.

Of all the 21 decrees contained in the British document Book No. 12-B, only 4 have been signed by the defendant himself, 6 have been issued by the Reich Ministry directly, and 10 by Secretary of State Frank, or his direct subordinates Dr. von Burgsdorff, 1 by the Czech State President Hacha.

The first decree signed by Herr von Neurath himself of June 21 1939, which contained nothing by the instroduction of the regulations concerning treatment of Jewish property valid for the entire German Reich into the Protectorate, which, since March 16th 1939, was a part of the German Reich too, had been presecribed to the defendant from Berlinnat the very beginning of his assuming of office. The fact, however, that it was published on June 21st 1939, 3 months later, proves the correctness of his statement, that he wanted to give the Jews time to prepare themselves for the instroduction of the Jewish legislation, as in force throughout the Reich. Its postponement to that day took place in the very interests of the Jews.

The second decree issued by the defendant himself on September 16th 1940, only prescribed an obligation to declare securities, i.e. mortgages which were Jewish property, and corresponded to the decrees of the same o or similar kind issued in the German Reich too and which were applicable to all German nationals.

The third decree issued and signed by himself of March 5th 1940, as well as the 4th, of September 14th 1940, aimed at rendering possible and facilitating Jewish emigration, as clearly shown by their contents, an emigration which the development of happenings in the Reich had made inevitable. Both decrees had accordingly been issued in the interests of the Jews themselves, and prove that the defendant had no anti-Semitic views.

H0187 - 0069

All the documents submitted by me which refer to this matter, especially the newspaper report concerning the boycott of the Jews in the spring of 1933 - doc. book I Nr. 9 - and the submitted depositions of witnesses, show that He did not approve of the measures taken against the Jews, particularly of the violent ones, but opposed them. As shown especially by the deposition of the witness, Dr. Koepcke, such measures would have been in contradiction with his completely Christian and human attitude and ideology. It is a matter of fact that until his departure from Prague not a single synagogue had been closed, and that no religious restrictions against the Jews have been decreed. It does not need any particular proof that the defendant cannot be made responsible for the 6 ordinances issued by the Reich Ministry of the Interior. But neither does he bear any responsibility for the decrees signed by Frank and by Herr v. Burgsdorff, in view of the independent position of Secretary of State Frank and the competence of the police concerning all matters Jewish, which I have described. In opposition to the assertions of the indictment it must be particularly emphasized that, according to his own sworn deposition, no persecution of the Jews has occured during his entire tenure of office.

His aforementioned human and Christian attitude and ideology makes the assertions of the Czech report of September 1945 - Nr. 998-PS - concerning an allegedhostility of the defendant against the Church appear from the beginning as hardly likely.

It is true that the Czech indictment of November 14, 1945 - does not make this report an object of an accusation, but, nevertheless, I should like to speak about it in a short way. It is proven by evidence that the relations between Herr von Neurath and the Archbishop of Prague have been very good , even friendly, and that the latter hasexplicitly thanked the defendant for his support of the churches, and this would certainly not have been the case if he had been opposed to the Church of if he had suppressed the churches, their organizations and clergymen or persecuted them in any way. It is certainly not an extraordinary occurrance that theremay have beendifferences in administrative matters, as has obviously been the case according to theletter of the Archbishop submitted by the prosecution - State and Church always have had differences with one another at all times

H0187 - 0070

and in all countries - but this canot be construed asimplying, on the defendant's side, a policy opposed to the Church. It may be right that clergymen have been arrested, but firstly these arrests have been ordered not by the defendant, but by the police, which was not under his control, and secondly - insofar the defendant has known of them at all - not, because of any church activity, but because of political intrigues. Neither is it clear from the mentioned Czech report whether the alleged actions against the Church, its organizations, and ministers have actually taken place during the defendant's tenure of office. The evidence has shown that he did not decree any anti-ecclesiastical or anti-religious measures, pilgrimages to theCzech religious relics e. g. were especially permitted by him.

Here I would also like to emphasize, that the defendant is not to be charged with any offense against Czech national-feeling. In contrast to the statement of the prosecution he did not destroy or close any Massarik-houses, nor did he destroy or remove any monumants of national personalities, as the prosecution would like to reproach him with. Insofar as the Massarik-houses were closed, the SS and the police which were not under his jurisdiction, are exclusively responsible for it. His attitude towards the Czech national-feeling is best illustrated by the factthat he especially permitted the deposition of wreaths at the foot of Massarik-monuments.

Just as little did the defendant take measures hostile to culture in spite of all efforts made in that direction by radical elements. The Czech theater-life was not touched and remained free, as well as Czech literature, which was not suppressed or encorached upon with the natural exception of forbidding such things that were of an anti-German or revolting character. Also the press, which by the way was not controlled and censured by him, but by the Reich Ministry for Propaganda, was not submitted to other limitations than theGerman press, as all in all the defendant's efforts were directed towards conserving and encouraging Czech national cultural life in its characteristic qualities and independence. I believe it is not necessary for me to go still further into details about that subject and that I can confine myself with referring to the defendant's own statements and the statements of the German witnesses heard on this subject.

H0187 - 0071

From these statements it will, however, also be clearly seen what difficulties and resistance from certain radical circles andauthorities, and not least from his own Under Secretary Frank, he was up against in his above mentioned efforts and in all his policy towards the Czech people.

If one wishes to draw up a summary of his official activities,we may say that his entire life in Prague was one single fight against the forces inspired andled by Himmler, a fight that was the more difficult because he did not actually possess full powers in the Protectorate, and the offices and authorities which were themost important and influential ones in the field of home politics, the entire police and Gestapo, were not under his authority. Nevertheless he did not abandonthis fight, and he did not get tired of protesting to Hitler repeatedly and demanding redress, in many cases successfully, inothers, not. He fought up to thevery end, and did not let himself be discouraged by failures and remained faithful to his policy of reconciliation and settlement, of pacification and consdrvation of theCzech people and of its national characteristics. And when he had to recognize, in Autumn 1941, here again, that any further fight was hopeless, that Himmler's influence on Hitler was greater than his own and thatt Hitler had now decided to change over to a policy of force and terror and to send to Prague for the purpose, Heydrich who was known as a bloodhound, he immediately drew his conclusions as in the winter of 1937/38 as Minister for Foreign Affairs, and resigned.

THE PRESIDENT: Perhaps this would be a convenient time to recess.

(A recesswas taken)

H0187 - 0072

THE PRESIDENT: The Tribunal will sit in open session on Saturday morning until one o'clock.

DR. VON LUEDINGHAUSEN: He left Prague and finally retired to private life. What an impression this resignation made on the Czech people and even in circles hostile to Germany, and what people took it to mean, follows with a clarity which can hardly be surpassed from the fact that the Czech report -- USSR 60 -- which was truly not dictated by pro-German sentiments or love for my client, characterized this departure of my client as a "geheeriger Schlag" in the German text, "a heavy blow" in the English text; a fact which fundamentally disavows its own accusations against Herr von Neurath. And in fact I believe I have proved that, during and as a result of his administration, the defendant was not guilty personally of a single crime against humanity punishable under the Charter of this Court and only such a crime could, after all, come into question here.

And here the basic question of this trial also arises, which is whether the defendant rendered himself guilty of supporting or aiding Hitler and his helpers -- in a manner punishable under the Charter -- in committing their crimes by accepting the office of Reich protector and by keeping it, in spite of the war launched by Hitler a few months after his assumption of office, and in spite of the events in November 1939, and several other occurrences. The prosecution answers this question in the affirmative. But can an objective, unprejudiced judgment of things really answer this question in the affirmative?

One thing should be unassailably certain after what we have heard here from the defendant himself and from the witnesses question on the subject by me and from the affidavits presented.

Just as little as external material reasons moved Herr von Neurath at that time to enter Hitler's government and remain in it, just as little did such reasons enter into his acceptance of the Reich Protectorate. Evidence for this is found in the fact alone that he declined the endowment which Hitler had intended for his 70th birthday in 1943; and when this was not possible, he had this endowment placed in his bank, as I have proved to you through the letter from his bank -- Document book V, No. 160 and 161 -- and never touched one penny of it.

H0187-0073

And how little the pomposity of the position of the Reich Protector attracted or much less suited him can unmistakably be seen from his letter of 14 October 1939 to the witness Dr. Kaepcke -- Document V, No. 1 -- in which he calls it an absolute prison.

In both cases, as has been proved not only by the defendant's own statements, but also by the statements of all the witnesses and documents which I have introduced, the motive and the reason for the acceptance of his position and his endurance in it was not perchance that he approved of the ideologies of the Nazi regime with all its methods and wanted to support them; to the contrary, his high ethical and moral convictions which sprang from his deep sense of responsibility towards his people as man and statesman -- these caused him to do it. Since he was not in the position and had not the power to remove Hitler and the Nazi Government, he considered it as his duty, at least in his small sphere within the compass and limits of his power in the field under his leadership, to fight the Nazi tendencies which he also despised and to prevent their materialization as far as his strength permitted.

Can one, so I ask, really reproach Herr von Neurath for this; can one condemn him because the task he had assumed with a sense of moral duty and a consciousness of responsibility was beyond his strength and he was frustrated by it?

For once, your Honors, free yourselves from all juridical and political prejudices, from all the retrospective considerations of things with their in any case very uncertain deductions, and think yourselves into the soul of this man, into the world of thought, into the conception of life of this man. Brought up in the house of his parents which was filled not only with Christian, humane and decent ideas, but also with the sense of responsibility towards its German people.

He had grown up and reached the age of 60 in civil service under the various governments, first under the imperial, then under the changing governments of the republic. Without caring for their political trends, without asking whether they were conservative, democratic or social-democratic, he had served them; he carried out the tasks assigned to him in his sphere of labor. As diplomat, as official of the Reich's Foreign Service, the field of internal politics was remote from him. He considered it his only duty to serve his

H0187 - 0074

people as such, regardless of its momentary governments and their inner-political attitude.

And thus, much against his personal wishes, upon Hindenburg's call in the hour of distress, he took over the Foreign Ministry and thereby entered the government of the Reich and remained in it also after Hitler was appointed, not as the representative of a certain political party, but as Hindenburg's special confidant in the field of Foreign Politics. He was the guarantor of the Reich's peace-policy, the rock of bronze in this field.

His whole education, his sense of responsibility towards his people, would not permit him to do anything else than to remain at his post when he was drawn into the whirl and dynamics of the National Socialist movement and had to see how this movement turned in directions and made use of means which he too could only condemn.

But exactly as was the case with other respectable and patriotic Germans whose sense of responsibility and duty to their own people had driven them to the decision to remove Hitler and the Nazi-regime by force, so it was with the defendant whose sense of responsibility and sense of duty not only towards himself, but also towards his people, forced him to set aside his personal abhorrence of the immorality of this regime and, by remaining in office and continuing to conduct it according to his principles, to fight actively against this immorality and thus to keep it away, at least, from the section controlled by him and to protect his German people from this immorality of the Nazi-regime and its consequences, namely war, as long as he had this possibility.

And when, then, a year and a half later, after his resignation, the call came to him again to accept a position, this time as Reich Protector of Bohemia and Moravia, and Hitler declared to him that he had expressly selected him for this position because he considered him the only suitable person to carry out his intended policies of a conciliation and reconciliation of the Czech people with new conditions and the German people, the very same sense of duty and responsibility forced him to follow this call, for, would he not have to deduce from the fact that Hitler -- in spite of knowing about his declining attitude toward the National Socialist regime, his policies and his expedients desired to entrust him with this task, that he really and honestly meant to effect a reconciliation and appeasement of the Czech people?

H0187 - 0075

Thus he confronted a task, the achievement of which would not only be of the highest benefit to his own, but also to the foreign people, atask which was not only to serve the conciliation of two nations,but also the ideal of humanity and Christian brotherly love, as well as to protect the Czech people from the pernicious methods of the Nazi regime.

And now I ask: Is it not least just as moral and ethical to pledge one' self and one's person for such a goal, to actively, if only to a limited exte work against this regime, recognized as immoral and corrupt by a cooperation, outwardly appearing as such, to prevent the use of the expedients of this system, and thereby saving innocent people from misery and death, as to grumblingly retreat because of personal aversion and to watch inactively how this regime rages against humanity without restraint?

Not everyone is of a violent nature, is a revolutionary, who would use force against the hated system and its executors. And do not forget, your Honors, that at that time, under Hitler's autocratic regime, only these two possibilities existed, to work really actively and positively against the nazi-regime and its terror. Under this regime no other possibilities existed to fight against a hated and accursed government, as this is the case in democratic free countries with free and independent selected parliaments. In Hitler-Germany any form of active or even public opposition only meant a completely useless sacrifice.

And therefore I beg you, your Honors, in the judging of the matter and in answering my question, separate yourselves from the democratic conditions and circumstances which are so familiar to you, but which are completely incomparable with the German conditions under Hitler at that time, a fact, the non-consideration of which has already caused some disaster up to date.

And did not the defendant von Neurath save the freedom and lives of thousands of people whose freedom and lives would have been irretrievably lost without him, especially by accepting the office of the Reich Protector, and which he kept, despite the fact that he had to realize that he could not accomplish this task without being guilty himself, that he did not have at his service the necessary means for its accomplishment, but that, in spite of it, continued his fight against the terror of the Nazi regime? Is this not worth a thousand times, is it not more, much more moral and ethical, than if he had

H0187 - 0076

retired right away, full of abhorrence and moral indignation?

I do not hestiate to answer this question in the affirmative, like my first question, and to express my conviction that no one can condemn me for this. Or shall a Sophoclean tragedy be unfolded before us, here in the fate of the defendant, in which a man becomes guilty, owing to no fault of his own, because he obeyed his conscience and his sense of responsibility?

Your Honors, I believe I have shown and proved in my preceding statement that not one of the actions of which the prosecution accuse my client is criminal in the sense of the Charter, and that not one of these actions by the defendant aimed intentionally at committing a crime in the sense of the Charter of this high Tribunal; that, in other words, there is no criminal action either objectively or subjectively. But I believe I have shown also, over and above this, that all my client's actions in their totality aimed at just the opposite of what the prosecution imputes to them --namely, not the perpetration, but the prevention of just such actions as the Charter defines as punishable crimes, be they crimes of planning, preparation or the waging of aggressive wars, be they crimes or crimes against humanity.

But there still remains one thing for me to do --to draw the conclusion to allthat, how impossible, how paradoxical even the principles of the conspiracy are with regard to my client, for the conspiracy has for its indispensable supposition that each participant not only wants the criminal objective, but also that he, upon entering into the conspiracy, by his participation, sanctions or will sanction from the start the preparatory actions or those in any way connected with it of the other members.

But when, as the prosecution intentionally is doing, one regards this as evidence of approving the criminal objective and all preparatory actions for its achievement by each one of the other members in their official capacity -- in international law proven alone by the fact of simply accepting or remaining in office in spite of knowing the criminal aims -- and for this fact alone institutes a criminal co-responsibility of each individual, the consequence inexorably follows with forceful logic, that the application of the principle of co-responsibility due to the acceptance of an office or of simply staying therein, without consideration as to the extent of his decent and ethical

H0187 - 0077

reasons, not only calls for motives and purposes for the punishment of the one who disapproves these criminal intentions, plans and actions of the others, but even fights it actively, and for this reason only accepted his appointment or remained in his position, as it was the case with the defendant von Neurath.

I do not need to prove, my Lords, that such a result is contrary to any not only natural, but also legal sense and thought, that it is contrary to that which this high Tribunal has to strive for and is striving for, that it is contrary to any moral and ethical postulate. This Tribunal not only represents Justice, the legal and ethical conscience of all civilized nations on earth, but ought to show the way to universal Peace to the coming generations. Only then can this task be fulfilled, when you show manking once more that any generalization, any levelling, any treatment, including judgment and conviction, of people and of their activities, based on corporative, I should like to say, even gregarious concepts, and not on the personality, the will and the designs of the individual, is of evil. Such treatment denies the holiness of the individual and is bound to lead to the adoration of mere might. And such adoration of might, such belief in might, has actually been the deep cause of the terrible events which once more have been unrolled here.

You can only then do justice to your double task -- to punish where chastisement should be applied according to divine and humane law, and at the same time to show manking the way to international peace -- if by your sentence you take away from manking the belief in might and give back, instead of this belief, to all nations on earth and, not in the least, to the German nation, the belief in and the respect of the holiness of the individual, which the Lord once created in his image. Convinced by the truth of such knowledge, I now place with confidence the fate of my client, the defendant Baron von Neurath, in your hands.

THE PRESIDENT: I now call on Dr. Fritz on behalf of the defendant Fritzsche.

H0187 - 0078

DR. FRITZ: Mr. President, the result of the evidence in the case of Fritzsche is a relatively clear one. Although I am one of the last to plead, it cannot be avoided to go into legal problems more closely. Above all these problems arise from the fact that Fritzsche was characterized by the prosecution in a particularly striking manner as an accomplice.

However, at first I must examine what position Fritzsche had in the Propaganda Ministry and what part he played in the German propaganda in general. It is these facts which ought to be conclusive in determining what part he supposedly played in the alleged conspiracy.

At the beginning of the trial, Mr. Albrecht submitted as evidence the organizational structure of the government of the Third Reich as of March, 1945, in the form of a diagram. Mr. Albrecht admitted himself that Fritzsche's name did not appear in it in the position of one of the main leaders of the Propaganda Ministry. It is true, he added, that his importance had been greater than one would be led to think from his position as shown on this diagram. He closed his statement by saying that evidence to this effect would be submitted to the Tribunal.

Has this been done, and could the hearing of evidence really prove that Fritzsche had greater importance?

At the session of 28 February 1946 Sir David Maxwell-Fyfe introduced as evidence a "compilation of the elements of guilt" which in a particularly impressive manner demonstrates in how far the individual defendants are connected with the facts of which they are to be guilty in the opinion of the prosecution. The classification of the individual defendants follows from the table which is attached to this compilation as Appendix A. The Tribunal will have noticed that the defendant Fritzsche is the only one not to appear on this table at all. From this follows that he does not belong to any of the organizations which are to be declared criminal here.

A look at the organizational plan of the Propaganda Ministry which was submitted in Brief E by the prosecution also shows especially clearly that even in his last position as ministerial director and chief of the broadcasting division he was only [illegible] of twelve officials of the same rank.

H0187 - 0079

Such a position in itself excludes a priori the assumption thathe could have determind the policy of the principles of news presentation and the principles of what may or may not become known to Germany and the world. It is true Captain Sprecher pointed out -- evidently in order to raise Fritzsche's importance -- that the chief of the German press division held a "unique" position, buthe did not pass over the fact in silence that he had predecessors and successors in this allegedly unique office.

When in November 1942, Fritzsche was appointed by Goebbels as chief of the broadcasting division, he did not obtain a higher position in the civil service heirarchy as a result of it. His activity was purely administrative. It concerned technical-organizational questions. In his affidavit of 7 January, 1946, my client describes the administrative work connected with it. He also mentions his numerous predecessors. Did it occur to anybody to indict also these persons as major war criminals or to call them supreme commanders of a propaganda instrument? Since this is not the case, the conclusion must probably be drawn that it was not Fritzsche's official position which formed the basis for the indictment.

Justice Jackson, too, pointed out that within the framework of the organizations under indictment here, not all administrativecivil service employees and division chiefs or state officials have been included as a whole; only the Reich Cabinet was named. Therefore, it can also not be imputed to Fritzsche -- as is allegedly possible in the case of the members of the organizations -- that from his position alone and the close connection of the individual members of the organizations it follows that they must have known and been completely clear about the plans of the alleged conspiracy by virtue of their membership alone.

During Fritzsche's cross examination, an attempt was also made by the Russian prosecution to magnify Fritzsche's position. It introduced three protocols as evidence, namely the interrogations of the witnesses Schoerner, Foss, and Stahel. However, these documents did not produce any supporting evidence. It is true that thesedepositions were only used to hold isolated passages from

H0187 - 0080

them against the defendant. Because of this limitation, I could forego the cross examination of the three persons who signed these protocols. But Fritzsche did not fail to express his opinion on these passages which were held up to him while he was being questioned on the witness stand. In this connection I have to point to only one more thing: These three persons did not even claim to have had any insight into the internal organization of the Propaganda Ministry. None of the three depositions contains any definite statement of Fritzsche's. On the contrary, these depositions contain more judgments, judgments which we do not want to know from witnesses, especially not in a case where they cannot furnish any kind of substantial facts. For this reason alone, their value as evidence must be denied. But aside from that aspect, they represent completely wrong judgments. They can by no means be derived from Fritzsche's own statements which were submitted in this trial by the prosecution - namely from his radio addresses.

If evidence against the defendant Fritzsche bearing out these more judgments could have been submitted, then, in view of the fact that the prosecution could have obtained all of his radio addresses, it would have been more to the point to submit here those statements made by him which would have enabled the Tribunal to form its own judgment. The transcripts of the interrogations only contain the shortly summarizing statement that Fritzsche was Goebbels' "deputy". I confronted the witness von Schirmeister with this assertion and he termed it as pure nonsense. Fritzsche had to say the same on the witness stand. There can be no doubt that the concurring testimony of both witnesses is correct. Finally, there are still hundreds of others who formerly worked in this ministry who could verify the truthfulness of these statements with their own knowledge.

I can state therefore that the attempt at enlarging Fritzsche's position contrary to the facts given in the organizational chart of the Propaganda Ministry as submitted by Mr. Albrecht - is a complete failure.

Beyond that, the hearing of evidence has shown that Fritzsche was not the creator of the great control apparatus for the German press, as was furthermore claimed by the prosecution. On the contrary, it was Dr. Goebbels

H0187-0081

and others of his associates. Fritzsche could not have been the creator because of the time element alone.

In the first place, he had been a regular employee for years, he then became a consultant (Referent) and it was only since the winter of 1938/39 that he was one of the twelve division chiefs of the Ministry. When he became chief of the German press division, the policy of the press was set by Reich Press Chief Dr. Dietrich. As has been said already, he became chief of the broadcasting division only in November 1942 and could not create anything fundamentally new there. Neither Goebbels nor Dietrich ever allowed the control of the German press and radio to be taken out of their hands. With regard to the details I want to refer to the testimony of the witness von Schirmeister.

The fact that Fritzsche could have been neither the creator of the press division nor a leader of the German propaganda as far as it emanated officially from the Ministry, is also shown by the other numerous statements both by Fritzsche, when questioned about it on the witness stand, and by the witness von Schirmeister.

During his entire activity, Fritzsche actually never possessed any authority to give orders in these fields, and could not have had it owing to his rank in civil service, which would justify his being called the creator or leader of the press and radio in the Third Reich. On the contrary, between Dr. Goebbels, Dr. Dietrich and him there were quite a number of other higher intermediary posts. In this connection I can also refer to what Lieutenant Meltzer stated in general about the importance of a state secretary in the Reich Propaganda Ministry and a Reich Press Chief when he referred to an affidavit by Amann of 19 December 1945; He pointed out that the holders of these positions exercised complete control over the news service in Germany. Fritzsche never held any of those positions. Incidentally, the Propaganda Ministry did not have only one, but three state secretaries. Besides, Dr. Goebbels had surrounded himself with a Ministry Staff (Ministerant). I believe it is appropriate to point here to this low rank because the prosecution thought, as it did in other cases, for

H0187 - 0082

instance in the case of the defendant Goering, to be able to conclude a special responsibility from a high rank, i.e. from a defendant's external position alone. Therefore, one can by no means start from the assumption that Fritzsche exerted any decisive influence upon propaganda in general and upon the policies which were pursued by the press and radio.

The tasks which Fritzsche accomplished on the technical side of the news system involved him only as a journalist and expert. They had nothing to do with the contents of the propaganda which was pursued by the state leadership. In this respect, too, he was only a person who carried out directives. It is true that he set up the technical organization of the journalist news offices. He thereby modernized and perfected them. It is also true that this news system played an important part later in the war. In that respect Fritzsche's work extended only over the period from 1933 to 1938. But it is a fact that in those years he did not have the least influence upon the contents and political trend of the news, particularly in view of the fact that he was a mere employee at that time.

I make these references to Fritzsche's official position within the Propaganda Ministry also for another reason. In admitting what he did and said and wanting to assume full responsibility for it - Fritzsche had an opportunity to explain in detail the cause for and contents of all the excerpts from his radio addresses submitted to him - he cannot, on the other hand, answer for theses which were championed by other offices of the state propaganda apparatus - also for those in his own Ministry. All the less can he answer for the unorganized propaganda of the party. Fritzsche described the various controlled and uncontrolled kinds of propaganda of the Third Reich and pointed out their effects. May I remind the Tribunal that the witnessVon Schirmeister testified to the effect that even Goebbels could not do anything with the "party doctrines"and the "myth" in the field of propaganda. According to the witness, Goebbels did not regard them as things with which to lure the masses. When the defendant Speer mentioned the secret agitation about the miracle weapons, he could point to other sources of unorganized party propaganda. For all that, Fritzsche does not bear any responsibility. His official position was not influential enough to be able to fight effectively against all faulty conditions and abuses.

H0187 - 0083

Therefore, his repeated attempt to have the " Stuermer" prohibited - he considered this paper an excellent means of anti-German propaganda - remained without success. The party propaganda with all its practical consequences, played a much more important part than that which Fritzsche with his comparatively limited functions could ever have played. I recall the fact, that according to Fritzsche's testimony, even Dr. Goebbels was afraid of Bormann. This was explained by the portentious sentence according to which, it was not the state which had to give orders to the party, but inversely the party to the state.

The hearing of evidence - especially the examination of the witness von Schirmeister - has thus shown, without any doubt, that the decisive directives for the propaganda of the third Reich came from other agencies. Goebbels, with regard to whom Fritzsche kept his distance personally, did not allow any of the subordinate officials in his ministry to interfere with his plans. It has been seen that he carried out his plans with the authority of his position, with the adroitness of his arguments, which the world knows, and if necessary, by means of fraud. The leadership of the German press policy - let us consider only this narrow sphere - was and remained in the hands of Dr. Goebbels and Dr. Dietrich. The same thing happened with the radio as the witness von Schirmeister has stated, when Fritzsche took over its direction in November 1942. Dr. Goebbels, one of the oldest and closest of Hitler's collaborators, and Dr. Dietrich, Hitler's permanent escort - during the war he was present almost uninterruptedly in his headquarters - never allowed the leadership of the press and radio to be taken out of their hands, especially by a man, who like Fritzsche, had no connections of any kind to Hitler, and had not even had a single conference with him. Ultimately, Hitler's will was decisive here, too.

We have furthermore heard what influence - it is of no importance here whether it was due to Hitler, Goebbels or Dietrich, - other governmental agencies too successfully exercised

H0187-0084

on the press and radio. Here I will mention the Foreign Office, the High Command of the Wehrmacht and other ministries, the heads of which were much more closely connected with the three aforementioned personages than, for instance, Fritzsche.

In order to avoid a misunderstanding, I would like to point out that the assertion of the indictment that Fritzsche was closely connected with the party propaganda apparatur, e.g., with the so-called Reich Press Agency of the NSDAP, has been expressively withdrawn by the prosecution in the course of the trial. With this, I think that I have sufficiently established the limits of the defendant's responsibility. This definition shows the inaccuracy of the widely spread opinion that Fritzsche occupied a very important and influential position in the "gigantic propaganda apparatus" of the Third Reich. This limitation not only takes into account the legal but also the moral facts, which have been clearly exposed by the production of evidence.

Thus to a certain extent I have already taken stand against the reproach that Fritzsche was a member of the alleged conspiracy. The prosecution has repeatedly tried to incorporate Fritzsche's work, at its different stages, in the alleged group of conspirators and has drawn from it conclusions which go so far as to say that Fritzsche was also responsible for war crimes, for crimes against humanity and even for crimes against peace. Already in the arguments of the indictment these attempts seemed to have little relevant justification. It is certainly no improper criticism, if I declare here, that it caused the prosecution a certain embarassment to display Fritzsche's subordinate position as an official, as so important and full of meaning. Today, now that the hearing of evidence is complete, it seems to me, that the attempts to include Fritzsche in the circle of conspirators has miscarried.

Fritzsche cannot be found at any of the sessions at which Hitler discussed any plans or actions with the closer or wider circle of his collaborators. And apart from this, he never

H0187-0085

actually took part either in any discussions which might have been capable of plunging the world into a blood bath of wars of aggression. He was neither an " old party fighter" nor was he "decorated" later on with the golden party badge. He did not belong, as I had to emphasize especially, to any of the organizations which are to be declared here as criminal. Up to the end he fulfilled the functions of an official in a ministry and received directives like any other official. He could never be a political advisor.

In view of the circumstances, the bridge between him and the alleged conspiracy could have been spanned only by the person of Dr. Goebbels. The witness von Schirmeister has repudiated such an assumption. According to his testimony, Fritzsche did not even belong to the closer circle around Dr. Goebbels. Indeed, von Schirmeister could even state that Fritzsche often had to apply to him because he could not get Dr.Goebbels' opinion on any question other than through him, as he was Dr. Goebbels' personal press assistant. The relations through the state secretaries - e.g. Dr. Dietrich, Dr. Naumann, to mention only a few - also involved certain difficulties. That is not the method by which conspirators usually communicate.

Moreover, the witness von Schirmeister has said that it was out of question that Fritzsche could ever have embarked on an exchange of ideas with Dr. Goebbels with a view to forming plans. Now, it would have been the task of the prosecution to prove to the defendant Fritzsche where his participation in the conspiracy can be seen. I say that one cannot consider any count of the indictment as proved.

I think that it was not Fritzsche's official position at all which led to the bringing of an indictment against him. I rather assume that the latter is solely to be traced back to his broadcast speeches which made him and his name known - but only during the war - both in Germany and perhaps also in a part of the rest of the world.

H0187-0086

All the serious charges levelled against him lead back therefore, only to these addresses. The other assertions concerning his position within the state or party apparatus are only based on assumptions or combinations without any factual basis, as appears for example especially clearly from the purely personal and refuted judgments of Schoerner, Foss and Strahel. But his name has only become so well known, because of the technical means he utilized. Only the great significance of the radio for the modern transmission of news made him appear in a special light. But because of this, it shall not be argued that he thus had a great influence on the German people. Out of our own experiences of Nazi-ruled Germany, I can well say that every Gauleiter, many a district leader (Kreisleiter), used a much more far-reaching language. But, as a rule, the speeches of the latter were only published by the local press.

With respect to these addresses, the defense was handicapped insofar as they could not be made available with their entire wording. Unfortunately, the excerpts quoted during the cross-examination by the Russian prosecution could not be complemented either by the entire text of the respective speech. Thus, all possibility disappeared of reproducing the sense the respective address had at the time it was delivered. Later on, I will come back to this and give an example of it. The method of sumbitting only individual passages or quotations to the Tribunal, is here especially inadequate because it is impossible to see from it that in his speeches Fritzsche always put the events of the day in the foreground. It was only rarely and incidental that he drew any general ideological conclusions. But already from what Fritzsche has stated with regard to those of his discourses, which the prosecution was able to produce in their entire text, there results a completely different picture as to the cause and motives of his broadcast speeches. From 1932 - thus already before the seizure of power by National-Socialism - up to 1939, the latter were nothing but a political press review. And that is what they were called! Accordingly, they were a collection of quotations from domestic and foreign newspapers.

H0187 - 0087

Fritzsche does not dispute the fact that these collections aimed at promoting the interests of the National-Socialist state. Only during the war, - but right till the end still based on quotations even from the foreign press - these speeches became the platform for the polemical controversy which, during the war, was carried on on both sides. Without any doubt they did greatly contribute toward the formation of political opinion in Germany, but there is also no doubt that many people in Germany listened to Fritzsche's speeches not for their polemics but in order to learn from his quotations something about the opinions expressed abroad. For years these speeches were chiefly private work carried out alongside his official position. Only during the war they came to be considered as semi-official because of their increasing political news value.

H0187-0088

Thus they assumed - in order to make it clearer - approximately the character of editorials of a newspaper, which - as one used to say - stands close to the government. It would have been easy for the defense to submit to the Tribunal tomes of newspapers dating from the same time, the editorials of which showed the same trend, and even, as it can be asserted here with all force, used quite a bit more violent language.

Fritsche could most definitely - and in my opinion quite rightfully - repudiate the fact that these addresses constituted an incitement to race hatred, to murder or violence, to hatred among nations or to wars of aggression If such an effect could really have been produced by these speeches, absolutely the same reproach should fall upon any editor of the Third Reich, who received the "slogan or the day" from the Reich press chief. The accusation seems to be levelled against Fritsche before this Tribunal only because through a technical means he could be heard at a wide range. But it is due to the war - and only since 1939 did his speeches gain a political news value at all - and in the nature of the thing, that the polemist becomes himself the subject of polemics. Especially the one whose influence, considered from the standpoint of political news value, extended farther technically than the influence of an article in a local paper. Only in this manner his name became better known to outsiders than names of people who were much more powerful than the publicist.

How far the prosecution went in its accusations against Fritsche in his capacity of a publicist is shown by the fact that not only is he supposed to have belonged to the plotting group of conspirators, but that he is also accused of crimes against peace. If a propagandist is subjected to such an accusation, there arises immediately the question of whether public radio speeches would not be the least proper means for carrying through criminal aims of a secret conspiracy. Speeches, which can be heard all over the world, could at best be suited for camouflaging such aims and for misleading the world. But actually, just the opposite reproach is levelled against Fritsche. He is supposed to have incited other people. Thus one may consider that the nature and the character of these speeches is sufficiently characterized. Their importance had to be brought in proper relationship to the far reaching con-

H0187-0089

conclusion of the prosecution.

Before going into the details of the accusation which states that Fritsche by radio speeches or by other means contributed towards the various wars of aggression, it is necessary, in a case where accusations to that effect, pertaining to criminal and international law, are raised against a publicist, to deal with a legal problem. At no point -- as far as I can see -- did the prosecution consider the question of whether and to what extent propaganda, i.e. the attempt to influence minds, especially during war, is subjected to the rules of international law. Perhaps this problem did not come up for discussion because this question, once it is asked, would have had to be definitely denied. However, while the indictment speaks of the "gigantic propaganda apparatur" during Hitler's dictatorship which was created as a consequence of the supervision and control of any cultural activity, it does not draw from it any conclusions for a judgment according to international law. For, as a matter of fact no generally or specially valid rules concerning this field have ever been established; also no sort of common law could develop here.

In this connection, it is interesting that in the textbooks of international law no attention is paid at all -- as far as I could find out -- to this problem. Nevertheless, a certain number of textbooks, especially those with a tint of natural law, contain regularly in their catalogues of fundamental international law also a section concerning national honor or national dignity. From the equality of nations and their living together in a community governed by international law the requirement is deduced in these chapters that they have to treat each other with respect.

Accordingly it is further more requested that insults directed by private persons from their own sphere of influence against other countries be prevented, and such excesses be pubished when committed. But this idea found its positive legal expression only in a series of national criminal codes which subject to punishment -- naturally in peace times only -- the insulting of foreign chiefs of state for instance: Another doctrine which is based less upon natural law holds that it is not a question of legal obligation but one

Price

H0187-0090

of international courtesy only. Be that as it may, in some form precisely defined international law does not exist, not even for peace times. Especially not as far as private propaganda through press and literature is concerned. And now as to war, any directive covering international law there is no limit to propaganda against foreign countries in war. Accordingly there is only one limit to this propaganda, namely the great limit which governs all the rules of warfare, that everything is permitted and only that quod ad finem belli necessarium est.

In view of the tremendous importance of moral influence upon the will of individuals and nations, it is beyond doubt that propaganda can be an important and in certain cases even decisive means of war, of no lesser importance than for instance economic warfare or even the fight with weapons. Propaganda has here a double task: First, to serve as a means for increasing the power of resistance of the own nation and secondly to undermine the fighting powers of the opponent. This influence -- rosy coloring on one side, slandering on the other, concealment of facts, etc. -- is in its character nothing else than a stratagem which, within the framework of the rules of land warfare, has been expressly declared as a permissible instrument of warfare, according to article 24 of the Hague rules of land warfare. In order to continue this line of thought, it may be pointed out that syping -- also a form of war strategem -- has equally been declared as a permissible instrument of warfare by the Hague rules of land warfare.

What has been said here is in complete accordance with what is practised by the countries; defamation of the opponent and its statesmen, making him contemptible, falsifying the motices and intentions of the enemy, defamatory presentation, assertion of unproved statements, all this belongs unfortunately to those means of propaganda which are used on all sides and at an increasing rate during a war.

Small attempts, but only for the purpose of preventing war, are known from the time before the first world war. At that time they pursued an even further reaching aim, namely to contribute in general to the understanding among nations by means of a general moral and spiritual disarmament. (Desarmement moral).

H0187 - 0091

However this goal was not reached before the first world catastrophe of this century. After 1918 though, as a reaction after the great armed conflicts, it received a stronger impulse and became known to the world through the tasks imposed upon the League of Nations in this respect. This was inded the first real attempt to start an intellectual disarmament. At the 5th session of the League of Nations in 1925 in Paris it was decided to found an institute for intellectual cooperation (cooperation intellectuelle).

Further investigations which lasted for years resulted in numerous propositions, in the establishment of general committees and sub-committees, of sections and committees of experts, with an incalculable wealth of documents. But nevertheless non of these great efforts led the idealistic impulse and the longing of the nations for a "moral disarmament" and for intellectual cooperation to a sober and concrete legislation which would have imposed legal obligations on the individual states as well as on their nationals. No results were achieved in advising a way in which to prevent during war, hatred, incitement, distortion of facts, and provocation of other nations or of the nationals of other countries in all the possible modern forms of expression.

Even such well-defined and comprehensive propositions for a moral intellectual disarmament as those presented by the Polish Government to the League of Nations in two memoranda of 17 September 1931 and 13 February 1932 had the same fate. These propostions aimed at using national legislation to prohibit any propaganda, insofar as it might become dangerous for peace, and even any propaganda which aimed at a mere disturbance of the good relations between nations. Influence was to be exerted not only upon the big public news media but also upon the vast ramifications in the administration of any modern state, including even the revision of schoolbooks. These propositions which advised member states not to recoil even from censorship and measures of prohibition finally failed because of the paradox existing at that time: These propositions were confronted with the deeply-rooted conception that liberty of expression of opinion in moral matters could not be touched by means of such exceptionally far-reaching police measures; this freedom of expression was to be preserved as an "unalienable right" granted by the Creator. And the

H0187-0092

matter stopped there with this opposition of fundamental principles: We have had here in the courtroom a special demonstration of what censorship and control of the press, radio and films could lead to.

The few bilateral agreements which were concluded after the failure of the Polish propositions of 1931 and 1932 are not worth mentioning here. They restricted themselves solely to certain sectors of propaganda methods, and only for the duration of goo-neighbour relations. Therefore we can only express the hope that on the nasis of international solidarity it will be possible in the future to unite these still contrary theses on a higher level.

In this trial a secret order was produced which had been issued by the High Command of the Wehrmacht on 1 October 1938. The latter, in its section for internation law, had a chart drawn up for the case of an armed conflict. On this chart one was to look up the principles for meeting any possible violation of the rules of warfare by friend and foe. Knowing the legal vacuum in the field of propaganda in its broadest sense, it is stated there that from the point of view of international law it is absolutely permissible to render the opponent contemptible and to try to undermine his strength "regardless of how many lies and falsehoods are used for this purpose", and that even from the legal standpoint a rule could be established for the future to the effect that in case the enemy should employ such propaganda, defense by means of "counter attacks" is legally possible, whereby "naturally the propagation of atrocity lies" must be used. This may sound cynical and brutal. But unfortunately it fitted in with the customs of war, or rather, this undisguised statement originated in the actual legal lacunas existing in internation agreements and in common Dr. Kranzbuehler rightfully stated here: In war thereis no duty to tell the truth.

Due to the period of time elapsed since the first world war and its propaganda methods on both sides, we are permitted today to consider the happenings of those days as belonging to history. At that time, too, all belligerents reached the point where they tried to undermine the opponent through the means of propaganda. The legend of children's hands cut off by

H0187 - 0093

German soldiers -- a war lie as Arthur Ponsonby proved in his book "Falsehood in War-Time" showed up in a French school-book even in the midst of peace, namely nearly 10 years after the first world war. Publications of all belligerent countries, drawings and cartoons, dating from the time of the first world war, can be found in abundance in all libraries. Many still remember today the film which showed terrible atrocities and was named: "The Knights of the Apocalypse", a motion picture which circulated almost throughout the entire world at the time fo the forst world war; and unfortunately the matter remained legally unsettled until today.

Is it possible to retroactively include the case of the defendant Fritsche

in his capacity of publicist in the Nazi state, into a new International Law, the creation of which is also one of the goals striven for by Mr. Justice Jacks in this Trial? Can the desire of the Prosecution to see Fritzsche punished as a war criminal be based upon the assertion of a logical development of existing laws when up to now, nothing absolutely nothing has been regulated juridically and legally in the field of propaganda and no fertile beginnings of any kind appeared in this direction? The question here is certainly not that of an only apparent legal loophole.

What has been said of course, does not include those cases in which individual crimes were actually incited by means of propaganda. Therefore, I shall now go into the individual accusations of the Prosecution in order to show that Fritsche is not guilty of having committed such acts.

As far as the alleged crimes against peace are concerned, the Prosecution starts from the point that any important political and military attack on the part of the German state leadership was preceded by a press campaign. Therefore the Nazi conspirators for that reason would have had used the press also as an instrument of foreign policy and as a feint to cover subsequent aggressive acti From that general, perhaps even correct description of such intentions, the far-reaching conclusion is drawn that Fritzsche may also be co-responsible for those matters. Such responsibility would be based only on the time factor that he was in December 1938 to the spring of 1942, the leader of the "German Press division within the official Ministry of Propaganda. But such inference lacks foundation. It could have been justified only if a proof had been found that Fritsche really was the creator and inspirer of all those press campaigns. But Fritzsche, if only due to his subordinate position, subordinate not only in regard to the departmental organization but also in relation to the real leaders of propaganda-Hitler, Goebels, Dietrich and others-, could have known only what his superiors presented to him, as to other employees, as historical truth.

I am reminded of the fact, that all witnesses, whenever testifying to the influence of the foreign policy on the press, always pointed out, that before any political, and especially before military actions, the Foreign Office justified the measures taken in the field of high politics before the public by the issue of White Books, Just as in the case of other intentions or goals of the

H0187 - 0094

highest leaders of the Third Reich, the press was informed also in these instances only what the public was permitted to learn, while matters not destined for publication w re kept secret.

After hearing the evidence, what indeed was the relation between the propaganda furnished by Fritzsche and the various military invasions? What could he have known of their background?

On the occasion of the occupation of Bohemia and Moravia, instructions by the chief of the Reich press were given to him only a short time before the decisive step of 15 March 1939. They consisted, as in all other cases, in so-called "Daily Directives" given out at press conferences. Such daily directives found their expression in the headlines of German papers. It may be mentioned here, that the best known organ of the party, namely the "Voelkischerbeobachter due to its direct connection with the chief of the Reich press - and, during th war, with the headquarters of the Fuehrer, has been more independant of such slogans of the day since it had a foreign news service of its own. What was printed in the "VoelkischeBeobachter" does not therefore, represent what had been approved by Fritzsche as leader of the German press. Fritzsche had already- and that attitude is of great importance in regard to all of his activities - established the principle for his press information

H0187-0095

H0187 - 0096

namely, that untrue news should never be given to the press. The apparent reason for that was the fact, that his predecessor in the "German Press" division, Berndt, had all kinds of news spread during the Sudeten crisis, losin thereby the confidence of the leading German writers. Fritzsche on the witness stand as well as the witness von Schirmeister gave details about these matters.

It is not apparent in what respect Fritzsche played a greater part than by any other officials or officers when the German troops marched into Czechoslovakia. Whatever has been disclosed in this trial about Hitler's hidden intentions of these days, was as little known to Fritzsche as the plan "Fall Gruen" could have been known to him. As head of the inland press, he could not have had any influence on the propaganda possibilities which were to be made use of within Czechoslovakia proper.

The same is true of the Polish campaign: Here, too, Fritzsche did in no way express himself for any armed conflict or spread purposely some information which might have supported any bellicose intentions. In his very radio broadcase of 29 August 1939, which was held against him during his cross-examination, he points out explicitly that there could not in fact exist any serious doubt about the German will for peace. These and many other lines are particularly significant in proving Fritzsche's good faith. He gave expression to his and the German nation's disappointment that Hitler's repeated emphasis on his will for peace had proved to be a lie, even a fraud. If one examines in their full meaning the other broadcasts by Fritzsche shortly before and during the Polish campaign none of his statements could be interpreted as favoring that war of aggression. The official reasons given at that time convinced Fritzsche as well as millions of other Germans that Right was on their side. That Fritzsche had been sharing such conviction in times is proved by his admission, declared on the witness stand, that he also feels to have been deceived by Hitler.

It was no different in the case of Yugoslavia. Here likewise Fritzsche was able to learn only whatever facts were given to him and to other leading journalists by the chief of the Reich Press, which Fritzsche had no opportunity to verify if only for the speed at which these events were developing, if ever

H0187 - 0097

the thought struck him at all that the press was utilized to provoke warlike measures.

The role of the press in the surprising attack on the Soviet Union was made particularly clear during this trial: Already for strategical reasons the total propaganda apparatus thus including Fritzsche, as head of the Inland Press division had to be left in the dark. It was just that campaign, which Goebbels cleverly kept secret by simulating an intended German invasion of England. Goebbels consciously directed even his closest collaborators on that wrong track, as was stated here by the witness von Schirmeister.

Fritzsche's statement, that he did not know anything about the secret preparations through the formation of a so-called Eastern Ministry was not refuted by the so-called Rosenberg report which was read to him during the cross-examination. This is a document which due to the many names it contains was used also in other connections. At the same time it is the only document, which includes the name of Fritzsche in connection with some secret plans. From that document, which was drafted by Rosenberg and some of his associates according to established facts sometime around the 28th or 29th of June 1941 -- thus after the start of the campaign -- no conclusion can be drawn, that Rosenberg spoke with the defendant Fritzsche before the decisive date. The draft does not bear any date or signature. Besides, Fritzsche is mentioned in it by the title of "Ministerial Director" which he was given only in the fall of 1942. Fritzsche's statement on the witness stand has in no way been disproved, namely that he never had been informed by Rosenberg either about an approaching war with the Soviet Union or about an intended formation of a Ministry for the East. Only after the beginning of that campaign and after the official announcement that a new ministry had been established the requests of Rosenberg were transmitted to him by his associates, with regard to the presentation of Eastern problems in the German press.

Thus Fritzsche's deposition still holds that in the case of the war against the Soviet Union, as well as in other instances, he had been informed only at the moment when he was given the pertinent news for publication. That would not imply, as should be admitted, that he played the role of a somehow scheming or at least informed conspirator. And it cannot be assumed that Fritzsche knew

H0187 - 0098

anything about the plans of the High Command of the Wehrmacht in June 1941 or even of the Bormann Protocol of 16 July 1941 -- both of which were read to him during his cross examination. Those negotiations show that they could only have taken place in the innermost circle. In this respect the hearing of evidence, which did not concern Fritzsche directly, has shown that even military means of deception had been used to camouflage the plans. This has been stated by the witness Paulus and becomes clear from the report of the German Military Intelligence Service. The nature of all these things was such that they could well be withheld from a newspaper man. Even the witness Gisevius, who after all, was always engaged in finding out secret ends, had to admit what efforts were required even within the High Command of the Wehrmacht to obtain information as to whether Hitler was planning a war or not.

In conclusion I want to state, therefore, that the emphatic assertion of the prosecution that Fritzsche was the accomplice of Goebbels in assisting him to hurl the world into a blood bath of wars of aggression is not justified. When I cross-examined Fritzsche he, on the other hand, pointed out: Whatever the facts may have been in the various instances, he and the German public at every moment from the advance into Austria to the invasion of Russia were given only such information as made the necessity of the German actions seem justified.

Now one could also conceive the charge of a crime against peace to be that Fritzsche constantly called on the German people to hold out during the carrying-out of a war of aggression. Naturally, he did not make any defeatist propaganda in the course of his radio speeches.

I must, therefore, discuss the question whether this or any sort of participation in a war of aggression, after the latter broke out, could be considered as participation in the crime against peace and could be punished accordingly.

The French Chief Prosecutor M. de Menthon tried to draw the conclusion -- proceeding from a literal interpretation of Article 6, Par. 2a of the Charter, without regard for the real meaning of this article -- that the soldiers and other representatives of the aggressor state could not undertake any military operations at all which could be justified by international law. He had to

H0187 - 0099

recognize openly, however, that in practise this idea must lead to impossible consequences. Thus, for example, he recognized the Hague Convention for the Rules of Land Warfare as a law which not only obligates aggressor and attacked alike, but also justifies them. [illegible] thereby let it be clearly recognized by implication that according to his idea this prescription of the Charter is to be interpreted restrictively.

In Art. 6, Par. 2a of the Charter the following are defined as crimes against peace: "The plan, the preparation, the introduction, and, according to the German translation, the "carrying-out" of a war of aggression. "Execution" is the translation of the English word "waging". It could be translated more correctly by "undertaking". Undertaking now means in its natural sense about the same as "intend", whoever undertakes pursues, intends something, has not executed it yet. The word "execute" could create the opinion that the crime against peace was not concluded with the outbreak of war and therefore could continue for the whole duration. The result of this conception would be that all the persons, who participated in the war operations, as for instance, the Army leaders, all members of the Armed Forces and beyond that all the persons who supported the war in any way [illegible] by deliveries of war material and through broadcasted speeches -- were to be punished according to this decision. They had at least contributed support to the waging of war. These persons could even then be criminals against the peace, if before the war they had in no way participated in the planning or preparation of it. Alas, even if they had no idea that an aggression was involved.

To counter this the following must be stated: Only those can be considered as the executors of a war of aggression who had planned it themselves. They just execute their common plan by starting the war, with or without a declaration of war. Thus "execution" ranges on the same level as beginning. The accusation of crime against peace can reach only those who also planned it.

This is supported by the following reasons:

Normally, penal law intends to protect the peace against wars of aggression, i.e. against unlawful wars. At the moment that such unlawful wars start -- are "unleashed" as the Indictment puts it -- the rightful domain of peace has been violated, the crime against peace is consummated and accomplished. There-

H0187 - 0100

fore, no other meaning but "bring about" "proceed to execute the plan" can be attributed to the term "carry through", or "undertake", waging.

This interpretation is also consonant with the historic development of t concept of "crime against the peace" International Law. For many years, international law has made a distinction between "war crime", in the narrow sense, and "war guilt", in the wider sense. War crimes are offenses against established rules of the law governing warfare, established by agreement or force or custom; against war practices and, going further, also offenses against humanity. War guilt means being guilty of having brought about war, in particular an unlawful war of aggression.

This distinction found expression also during negotiations on the peace treaty after the first World War. A deposition of this is found in Article of the Treaty of Versailles. There can be no doubt that the concept of crim against the peace in the meaning of the Charter is to be identical with this war guilt in the previous meaning of international law. Paragraph 6 part 2a has to deal with the war criminals, that is to say those who bring about an illegal war.

The opinion that the further support of a criminally instigated war was likewise a crime against peace, must lead to entirely untenable consequences. Thus, hardly any citizen of a country, which had started a war of aggression would be guiltless. The war in its present form is, unlike any previous one no longer limited to fighting between the armies. It extended -- as has been shown in both these World Wars -- over all the belligerent nations and over all their vital interests. It grew into a total war. Total in this sense, that everybody takes part in it. The woman, who is manking screws in the factory, is cooperating equally in this total war. And, as Professor Exner so vividly explained in his final pleading, in this war of aggression every arrestation would mean a deprivation of liberty, each requisition a robbery and each shot a murder. It really would be absurd were all members of a nation to be made responsible as authors of crimes against the peace.

A classification as to the grade and kind of the contribution towards the war would moreover be practically impossible.

Crimes against peace therefore can only be committed by those who were

H0187-0101

collaborating in breaking the peace, whilst the bulk of the people, who had not participated in it, could not be counted in this category.

The point of view which has been developed here is, in my opinion, also represented in the Indictment. The latter considers the crime of breaking the peace realized by the "unleashing" (Entfesselung). In no place has it even been hinted that the crime itself or its continuation is seen in participation in war or in its support by production or supply of any kind. Also, according to the drawing up of the indictment from the period of time from the beginning of war onwards, only crimes of the second and third group come into question, also war crimes in the more closely defined sense of International Law, and crimes against humanity.

In my opinion Justice Jackson, in his opening speech of 21 November 1945 also took the point of view which has been advanced here, whereupon it was pointed out to him in the Session of 1 March 1946: Justice Biddle called his attention to the fact, that at that time he had indicated that the beginning of the war was the character of the crime and not the engagement in war itself, i.e. in other words, that with the beginning of the war of aggression the crime against peace within the meaning of Article 6 Paragraph 2a of the Charter was completed (breach of peace).

From these statements it is to be concluded, that any activity during the war which furthers the war cannot represent a criminal act, neither can the radio broadcasts of Fritzsche, which he made during the war.

THE PRESIDENT: The Tribunal will adjourn now.

(The Tribunal adjourned until 25 July, at 1000 hours.)